THE COMMISSION OF FINE ARTS

ESTABLISHED BY CONGRESS MAY 17, 1910

J. CARTER BROWN, Chairman

HAROLD BURSON
JOHN S. CHASE
SONDRA G. MYERS
WALTER A. NETSCH
ALAN R. NOVAK
EDWARD D. STONE, JR.

CHARLES H. ATHERTON, Secretary

708 JACKSON PLACE, N.W.
WASHINGTON, D.C. 20006
202-566-1066

Meeting of the Commission of Fine Arts

March 10, 1981

AM
10:00 CONVENE, 708 Jackson Place, N.W., Washington, D.C.

I. ADMINISTRATION

A. Introduction of new members

B. Approval of January 13, 1981 minutes

C. Dates of next meetings: April 7, 1981
May 12, 1981

D. Confirmation of appointment of Hugh Miller, AIA, to the Old Georgetown Board of Architectural Consultants

II. SUBMISSIONS AND REVIEWS

A. District of Columbia Department of Housing and Community Development

1. Shipstead-Luce Act

a. S.L. 81-34, 3501-19 17th Street, N.W. New construction, Oakwood Commons; resubmission.

b. S.L. 81-19, 520 North Capitol Street, N.W. Renovation to Commodore Hotel.

c. S.L. 81-31, 2609 Klingle Road, N.W. Design for new residence facing Rock Creek Park.

d. S.L. 81-32, 2643 Virginia Avenue, N.W. Revised designs and material sample for gas station renovation.

e. Appendix I

2. Old Georgetown Act

a. O.G. 81-72, 3020 K Street, N.W., Georgetown Harbor Assoc. New mixed use project; final preliminary designs; Western Development Corporation.

b. O.G. 81-70, 3300 M Street, N.W. New commercial office and residential building; preliminary design.

c. O.G. 81-65, 3222 M Street, N.W., Georgetown Park. Residential development; revised elevations facing Canal. Georgetown Park Associates; preliminary designs.

d. O.G. 81-73, R 3256 M Street, N.W. Raze buildings.

e. Appendix II

B. Department of Transportation and National Park Service

1. CFA 10/MAR/81 - 1, Signage on Theodore Roosevelt Bridge and approaches to Interstate 66; revised designs.

C. Smithsonian Institution

1. CFA 10/MAR/81 - 2, Smithsonian Castle building; handicapped entrance modification; Mall site.

D. American Battle Monuments Commission

1. CFA 10/MAR/81 - 3, Pershing Statue; intermediate study maquette; one third full size.

E. Pennsylvania Avenue Development Corporation

1. CFA 10/MAR/81 - 4, Inspection of Pennsylvania Avenue lighting; review of demonstration, 9 March 1981.

2. CFA 10/MAR/81 - 5, Pennsylvania Avenue Triangle. 6th Street, Indiana and Pennsylvania Avenues. An office, hotel and housing project; Westminster Investing Corporation; informal review.

III. INSPECTION

A. Freer Gallery

1. Inspection of proposed acquisitions; Freer Gallery of Art.

APPENDIX I

REPORT OF ACTIONS TAKEN UNDER THE SHIPSTEAD-LUCE ACT

March 10, 1981

NO.	ADDRESS AND OWNER	PROJECT
S.L. 81-18	1331 Pennsylvania Avenue Quadrangle Development	New development office/hotel/commercial

ACTION: See letter dated January 26, 1981 from J. Carter Brown to Robert L. Moore.

S.L. 81-20	311 1st Street, N.W. National Restaurant Association	Remove existing signage and replace with our name using cast bronze letters, 4" high, oxidized in a prismatic 333 style.

ACTION: Issue permit for change of sign text with 4" bronze letters.

S.L. 81-21	1 Farragut Square, N.W. 1 Connecticut Associates	Sidewalk Cafe

ACTION: Issue permit for fiberglass planters and tables with orange fabric umbrellas; proposed plastic disc like devices over tables disapproved.

S.L. 81-23 HPA. 81-179	431 New Jersey Avenue, N.W. Goodman-Myers Partnership	Carry out repairs to the existing building; point brick walls; replace doors and windows; install new window at the rear.

ACTION: Approved: Issue permit for repairs and new work including replacement of window sash with new thermopane windows to match size and design of existing.

S.L. 81-24	807 15th Street, N.W. Capital City Savings and Loan	Changing face of sign in front of building.

ACTION: Issue permit for changing text of sign in bronze color with white letters.

S.L. 81-25	1700 Pennsylvania Avenue Columbia First Federal	Two existing signs to have letters revised to new name "Columbia First Federal Savings and Loan Association." all materials and colors, and illumination to remain the same on new face.

ACTION: Issue permit for changing text.

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* Has been previously reviewed by the Commission of Fine Arts

REPORT OF ACTIONS TAKEN UNDER THE SHIPSTEAD-LUCE ACT

March 10, 1981

NO.	ADDRESS AND OWNER	PROJECT
S.L. 81-26	300 7th Street, S.W. Columbia First Federal Savings	Replace two existing corner signs with two new back lighted from interior of aluminum; bronze painted panels with translucent white letters

ACTION: Issue permit for signs to be centered between columns. No sign or equipment shall be on actual corner of building. (See drawings as modified.)

S.L. 81-27	300 Pennsylvania Ave. S.E. Perpetual American	Automatic teller and canopy at window.

ACTION: Approved: No objection to design of walk-up banking facility and canopy.

S.L. 81-29	747 4th Street, N.W. Charles S. Vaccaro	Erect steel canopy on front of and sides of store; to be covered in aluminum shingles, secured by 8" hook, bolts and lock washers.

ACTION: Approved for work in progress. Recommend that new work match color of existing building.

APPENDIX II

REPORT OF ACTIONS TAKEN UNDER THE OLD GEORGETOWN ACT

March 10, 1981

NO.	ADDRESS AND OWNER	PROJECT
O.G. 81-32 HPA. 81-84	3129 P Street, N.W. Ann Skiff	Alter basement for garage, cut down existing windows in bay for garage door, new driveway and retaining walls.

ACTION: Issue permit.

O.G. 81-38 HPA. 81-94	1220-1226 31st Street, N.W. RSSN Associates	Repair of existing 3 story structure to include: exterior walls and roofs; new windows and doors as shown on drawings; new floors and interior walls; new stairway.

ACTION: Issue permit for renovation of buildings at 1220, 1222 and 1226 31st Street, N.W., retaining existing facades facing 31st Street and on north side of 1226 31st Street, N.W. Existing roofline and profiles are to be retained.

O.G. 81-49 HPA. 81-137	1025 Thomas Jefferson St. Galliher and Brothers	Construction of a new structure with office space, apartments, commercial space and parking. Conceptual review.

ACTION: Revised concept and preliminary designs approved for new structure with parking, retail, office and residential uses. Some additional design refinement may be desireable on the west facade beneath the middle turret to give added emphasis to that element. Submit full working drawings, details and material samples as ready. Final material sample approval shall be given after inspection of on-site brick and mortar panels. Lights, sign and landscaping for the project shall be reviewed and coordinated through architect by the Commission of Fine Arts.

O.G. 81-51 HPA. 81-141	3001 Cambridge Place, N.W. David Wallerstein	Construct curbcut and driveway

ACTION: Issue permit for new curb cut and garage entrance. Proposal would not have an adverse impact on the main facades of a historic building, nor would it cut through topographical or planting features or disrupt the streetscape.

O.G. 81-52 HPA. 81-	1001 34th Street, N.W. Donohoe Companies	Renewal of permit #B279004 to erect one new apartment building, accessory parking, brick and concrete, seven stores as per application plans and plat.

ACTION: Issue permit. Action does not include finish materials. Commission must review and approve sample brick panels before construction. Dark Brown brick not recommended. Recommend a brick in red range.

REPORT OF ACTIONS TAKEN UNDER THE OLD GEORGETOWN ACT

March 10, 1981

NO.	ADDRESS AND OWNER	PROJECT
O.G. 81-54 HPA. 81-150	1000 Potomac Street, N.W. Weissburg Development Corp.	Erect sign

ACTION: Issue permit for two signs, one to be pin mounted individual letters within the garage entrance, the other to be free standing by special exception. The free standing sign drawings have been modified to show a concealed source of illumination which will indirectly light the edges of the letters

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O.G. 81-56 HPA. 81-145	1537 28th Street, N.W. Mr. Daniel Parker	Addition of greenhouse to east end of house, remodeling of existing kitchen, pantry and breakfast room.

ACTION: Issue permit for new construction of green house addition and alteration of windows and conversion of window to door on side of existing house, per plans. Note that original plans have been modified and that changes are shown on the architects supplemental sheets included herein.

O.G. 81-57 HPA. 81-155	3207 M Street, N.W. Capital Foodservice	Alter storefront; remove old glass and frames, doors of entrance, concrete threshold frame work of soffit facia roof and gutter.

ACTION: Issue permit for show window alteration and door replacement. Line of fascia above show windows shall be uniform, not stepped, see drawing.

O.G. 81-58 HPA. 81-163	2833 M Street, N.W. Madison National Bank	Install automat bank equipment near entrance.

ACTION: Issue permit for banking equipment within M Street entrance recess.

O.G. 81-59 HPA. 81-164	1300 Wisconsin Avenue, N.W. Interstate Federal Savings and Loan	Removal of existing signs, and replacing with new signs.

ACTION: Issue permit for new sign.

REPORT OF ACTIONS TAKEN UNDER THE OLD GEORGETOWN ACT

March 10, 1981

NO.	ADDRESS AND OWNER	PROJECT
O.G. 81-60 HPA. 81-167	3324 Dent Place, N.W. Margret Cheney	In ground pool

ACTION: Issue permit for swimming pool. Submit applications for review of new fence designs, above grade lighting or any new structures for review and approval by the Commission.

O.G. 81-61 HPA. 81-169	3106 N Street, N.W. Gerry Sigal	In ground pool

ACTION: Issue permit for swimming pool. Submit applications for any new fences, above grade lighting or structures for review and approval by the Commission.

O.G. 81-64 HPA. 81-175	1411 35th Street, N.W. H. Graham	Renovate existing ground level bath, enclose existing storage area under second floor deck and incorporate existing laundry room into this new space, build new laundry room in existing rear entry area.

ACTION: Issue permit for renovations to building. Recommend that lattice gate not be used, and that either existing iron or solid wood gate be used.

O.G. 81-66 HPA. 81-181	3245 S Street, N.W. Dumbarton Oaks	Interior renovation and new porch over front entry.

ACTION: Concept approved for adding front porch and relandscaping the forecourt. Recommend additional study of railing elements on top of porch.

O.G. 81-67 HPA. 81-187	3106 M Street, N.W. American Security Bank	White anodized aluminum letters on 1/2 studs "American Security Bank."

ACTION: Issue permit for sign.

O.G. 81-68 HPA. 81-191	1417 27th Street, N.W. John Nef	New entrance door to match existing adjacent door; removal of minor interior partitions; paint interior; new light fixtures.

ACTION: Issue permit for new entrance door to match existing.

REPORT OF ACTIONS TAKEN UNDER THE OLD GEORGETOWN ACT

March 10, 1981

NO.	ADDRESS AND OWNER	PROJECT
O.G. 81-71 HPA. 81-198	1077 30th Street, N.W. James Place at Georgetown, Incorporated	Installation of sign

ACTION: Issue permit for sign.

THE COMMISSION OF FINE ARTS

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MINUTES OF THE COMMISSION OF FINE ARTS

10 March 1981

The meeting was convened at 10:00 a.m. in the Commission of Fine Arts offices at 708 Jackson Place, N. W., Washington, D. C.

Members Present:	Hon. J. Carter Brown, Chairman Hon. Harold Burson Hon. John S. Chase Hon. Sondra G. Myers Hon. Walter A. Netsch Hon. Alan R. Novak Hon. Edward D. Stone, Jr.
Staff Present:	Mr. Charles H. Atherton, Secretary Mr. Donald B. Myer, Assistant Secretary Mr. Jeffrey R. Carson Mrs. Sue Kohler Mr. Richard H. Ryan
National Capital Planning Commission Staff Present:	Mr. George Evans

I. ADMINISTRATION

A. Introduction of new members. The Secretary introduced two new members of the Commission: Harold Burson of New York City and Alan R. Novak of Washington, D. C.

B. Minutes of 13 January 1981 meeting: approved.

C. Dates of next meetings: 7 April 1981
12 May 1981

D. Confirmation of appointment of Hugh Miller, AIA, to the Old Georgetown Board. The Secretary reported that Mr. Miller, a registered architect, is a leading authority on restoration and preservation technology and currently Chief Historical Architect for the National Park Service. The members agreed that these qualifications would make him a valuable member of the Georgetown Board, and his appointment was unanimously confirmed. Exhibit A

II. SUBMISSIONS AND REVIEWS

A. District of Columbia Department of Housing and Community Development

1. Shipstead-Luce Act

a. S.L. 81-34, 3501-19 17th Street, N. W. New construction, Oakwood Commons; resubmission. The Secretary reviewed this proposal for fifty-two dwelling units west of the Woodner Hotel, which had been presented to the Commission in June 1979. At that time, the concept was approved with the proviso that trees be planted along the 17th Street frontage, which faces Rock Creek Park, and that all retaining walls facing the park be faced with brick and planted. Following this action, citizens in the area expressed concern over the density and effect on the park and the surrounding area. When the developer asked for further review the Commission asked that all zoning action be completed first. However, it was pointed out that the first two rows of houses could be constructed as a matter-of-right and so the Commission was asked to review that section of the project at this meeting. It was noted that the Commission had visited the site earlier in the day. Exhibit B

The architect, Jesse Weinstein, was then introduced. He stated first that zoning approval for the entire project had just been obtained, and then discussed the changes that had been made to meet the criteria set by the Commission in 1979. He said honey locusts would be planted along 17th Street, and large willow oaks would screen the back row of houses from the park. Chinese dogwood and other flowering trees would be planted elsewhere. (Mr. Stone suggested later in the discussion that all screening trees be willow oaks because of their more dense foliage.) Mr. Weinstein pointed out the retaining walls on 17th Street and along the driveway leading to the parking area, saying they would be faced with brick and planted with ivy.

There were several neighbors present who wished to voice their reservations about the project. Andrea Wolfman spoke on behalf of the North Mount Pleasant neighbors. She summarized a written statement presented for the record by saying that the objection was primarily to the density and to the way the houses on 17th Street faced inward rather than outward toward the community. She said there was not enough green space left between the street and the first row of houses, and commented also on the effect the foundations for the driveway retaining wall would have on tree roots on adjacent property; she was worried also about the possible safety hazards of these walls. Ms. Wolfman concluded by saying that maintenance of the Woodner property was very poor, and the neighbors were concerned that they would face the same problem with the new houses. Timothy Smith, Alice Hussey and Donald Ferguson commented on the effect the site plan and the retaining walls would have on the tree roots and soil erosion, and on the pollution expected from the increased traffic in the area.

Architect Weinstein and developer Jonathan Woodner than replied to these comments and to questions from the members. Mr. Woodner said it would be difficult to reduce the density because of the expense of site development and the underground garage. In answer to the neighbors' objection that the 17th Street houses would face inward, Mr. Weinstein pointed out that their major rooms all face the street. It was suggested by the Commission that providing entrances on this facade would make the houses more open to the community and remove the feeling of isolation. Mr. Weinstein said the problem of traffic safety at the 17th Street entrance would be alleviated by a blinking light and sign, required by the District Government; he added that because of the grade, the entrance could not be placed elsewhere.

The Chairman then commented on the citizen testimony. He said that while the existing wooded condition on 17th Street was an amenity, there could be no guarantee of its continuance because it was private property, adding that the Commission must concern itself, under the Shipstead-Luce Act, primarily with the view of the development from the park and its effect on the park. He noted also that the maintenance problems referred to belonged to the Woodner Hotel, and that the new development would be the responsibility of the individual owners, not the hotel. He stressed again the importance of opening up the 17th Street facades to the community and of providing proper landscaping.

Mr. Weinstein then discussed the zoning questions. He said two special exceptions and a variance had been requested, involving the treatment of the apartments in rows 2, 3, and 4 as three single buildings with masonry dividing walls, the use of part of the underground garage by the Woodner Hotel, and the use for parking of an above ground section of this garage. He said all these requests had been granted, enabling the Commission to review the entire project rather than just the first two rows. Mr. Netsch said he would prefer to consider the entire development at this time and the other members agreed. After further questioning of Mr. Weinstein regarding the trees, type of lighting, and pedestrian access throughout the project, it was unanimously approved, with provisions of the approval to be spelled out in a letter.

b. S.L. 81-19, 520 North Capital Street, N. W. Renovation of Commodore Hotel. Staff member Jeffrey Carson reviewed the history of this hotel, located near the Capitol, City Post Office and Union Station. He reported that it had been constructed in 1927 by builder Harry Wardman; the architects were Pierson and Wilson. He showed drawings for the repair and modification of the facade, which would include replacement of all windows, change in fenestration at the second floor level, iron grilles over air conditioning openings under the windows, and the stuccoing of the top floor. The members had no objection to these alterations in principle, although there were some reservations about the design of the grille--whether it would be too transparent to conceal the air conditioning units. The project was unanimously approved, with the proviso that material samples and a revised design of the grille, to test its effectiveness as a screen, be submitted at a later date.

c. S.L. 81-31, 2609 Klingle Road, N. W. Design for new residence facing Rock Creek Park. Mr. Carson pointed out the location of this house, just north of the zoo and adjacent to three existing houses which the Commission had driven past earlier in the day. The south elevation would face the park. The architect, Mr. Bechhover, explained that the house would be cut into the site to keep visibility from the park to a minimum; he added that the extensive retaining walls needed would not be seen from the park or the adjacent houses and would be planted with ivy. Solar collectors would be place below the house so they would not be seen. When asked about the roof material, Mr. Bechhover said he intended to use asphalt shingles. It was suggested that wood shingles might blend in better with the landscape, in addition to their energy-saving advantages, but he was asked to bring in a sample for approval, and a request was also made for a site plan and landscape solution. There were no further questions and the project was unanimously approved, pending these submissions.

d. S.L. 81-32, 2643 Virginia Avenue, N. W. Revised designs and material sample for gas station renovation. The Assistant Secretary noted that the members had seen this site on a tour prior to the meeting and then showed drawings of a proposed new design for the renovation. All thought it was decidedly superior to a previous submission, but it was suggested that the large sign be lowered, to no higher than eye level, and that it be placed closer to the street. Sunoco representatives present said the company did not own that property; the Chairman, therefore, suggested they work with the staff to find a suitable design and location for their sign. Mrs. Mary Healy, representing the community, said the neighbors had not been informed of these plans and were concerned about the level of illumination and type of lighting, as well as the maintenance around the station. She asked if the tall lights were going to be removed, leaving just the downlighting on the pump island. The Sunoco representatives said they had intended to keep the tall lights but would consider eliminating them if they were a problem. The project was unanimously approved with the provision that Sunoco work with the staff to solve the sign and light problems.

e. Appendix 1, approved.

2. Old Georgetown Act

a. O.G. 81-72, 3020 K Street, N. W., Georgetown Waterfront. New mixed use project; final preliminary designs; Western Development Corporation. The Assistant Secretary informed the members that this project was being presented for final preliminary review; no formal request for a permit had been submitted. He recalled that since the Commission had given preliminary approval to the design in October 1980, working drawings had been prepared and had been reviewed by the staff. A few minor changes had been noted, the most important of which was the increase in width of one of the penthouses. He noted that the Georgetown Board had also reviewed the drawings. A brief history of the project was given for the benefit of the new members, including the

Commission's preference for all park on this site, the rejection of the original design proposed by the same developer but a different architect, and the Commission's efforts toward reducing the height and mass of this design. He commented also on the concern, expressed by both the Commission and various citizen groups, that the project would be built on a floodplain, and noted that the Commission had visited the site earlier that day.

The Secretary then reviewed the Executive Order on Floodplain Management (No. 11988) and its directives to Federal agencies involved. He said it had been his understanding that the Commission was not subject to this order, but an inquiry to the Justice Department brought an opinion that it was. This would mean that the Commission could not support projects in floodplain areas if there were any other alternatives. Exhibits C and C-1

Before introducing the architect, Arthur Cotton Moore, the Assistant Secretary noted that the townhouses to be built near Rock Creek were not part of the submission for this meeting. He also told the members that future use of the land west of the project, owned by the District Government, was not yet certain, although a letter received from the District had stated the District Government's intent to reserve it for park use. Exhibit C-2

Mr. Moore then reviewed the project for the new members, adding that the drawings accompanying this submission were final working drawings, filed for permit with the District Government. He said the only reason this was termed a final preliminary review was because it had not yet cleared zoning, although he fully expected it would. Landscape architect Joseph Brown, from the firm of EDAW, then discussed the landscaping and park aspects. A drawing of the boat basin area disclosed a change: there was no longer a basin but rather a lake with a floating dock extending out into the river. Mr. Moore said this was not a final plan, and the question of a basin or lake was in the process of being worked out with the Corps of Engineers.

Thomas Wright, representing the Georgetown Board, reviewed the Board's conclusion that the working drawings conformed to the preliminary plans with the exception of the enlargement of one penthouse to accommodate a generator. He commented that, personally, he hoped that another location could be found for the generator so that the size of the penthouse would not have to be increased.

Alberto Bastida from the District Government Office of Planning then reaffirmed the District's commitment to remove all unsightly uses from its waterfront land and said a proposal would be submitted to the Commission.

A large number of citizens attended the meeting and several of them wished to read statements opposing the proposed development and

supporting park use of the land. Their names and organizations were as follows: Katharine Sullivan, Georgetown ANC's and the Committee for a Waterfront Park; Donald Shannon, president, Citizens' Association of Georgetown; Judith Bonderman, Georgetown ANC delegate; Lawrence Stevens, National Committee for Urban Recreation; Mrs. Schlefer, Committee of One Hundred; Barton Alexander, architect; Janet Auchincloss, Women's Rowing Association of Georgetown; Mr. Churchill, Foggy Bottom ANC's; George Pugh, Palisades Citizens' Association; Henry Whitney, architect; Joel Garner, Wisconsin Avenue Corridor Citizens' Association; Aimee Laderman, marine biologist; Mrs. Tartiere, Georgetown resident; and Ray Kukulski, Georgetown ANC delegate. Their arguments followed closely testimony given at previous meetings. (Exhibit C-3)

Developer Herbert Miller than presented his arguments for the project. He said only eighteen percent of the open space from Key Bridge to Rock Creek would be developed, with the remaining eighty-two percent dedicated to park use by both the developer (3.2 acres) and the District Government. He noted the reduction by fifty percent of the density permitted by zoning laws in his proposed development. Mr. Miller then outlined the amenities he would provide for the public within the development, as well as the monetary and planning assistance he would offer to the District Government and the National Park Service for construction of a public park from 31st Street to Wisconsin Avenue and the esthetic improvement of the Whitehurst Freeway. He mentioned also the number of jobs the project would provide and the tax revenue it would generate. (Exhibit C-4) He said he believed his project met all floodplain criteria, and added that he had been given the legal opinion that the Commission of Fine Arts was not subject to E.O. 11988. He commented that he was giving the citizens about the same degree of development density and far more park area than they had requested in 1975. Both Mrs. Sullivan and Mrs. Bonderman disputed this statement.

In the course of this discussion, Mr. Brown asked Mr. Moore if the developer wanted a determination at this meeting as to whether the Commission would actually recommend to the District that a permit for construction on this site be granted. Mr. Moore replied that since they felt they were within days of getting zoning approval, they would like such a determination now.

Mr. Novak, one of the newly appointed members, then asked the Chairman what the Commission's position on this project was, now that it had been reviewed three times. Mr. Brown replied that the Commission had long been on record as supporting park use for the entire area, but as the membership had substantially changed, it should be asked at this point if the new Commission wished to reaffirm this. He then commented on the District Government's position in regard to the all park solution. He noted that while a recent letter from the mayor to the president of the Georgetown Citizens' Association(Exhibit C-5) was subject to interpretation as to whether he supported all park use of the waterfront or just

a park on the waterfront, it had been made quite clear during the Senate hearings on the waterfront that he favored the all park solution if funds for purchase could be found. Mr. Brown then noted that in coming to any decision on this project the Commission would have to consider the Justice Department's opinion that it must abide by the Executive Order on Floodplain Management. Mr. Novak commented that if the Commission were to make a decision based on this, then the order's applicability would probably be tested. The Chairman agreed, and commented also that up to this point, the Commission had been reviewing the project, even though it preferred the all park solution, because it had been asked to do so by the District Government. Under its mandate, he said, the Commission was required to render advice when asked. It was felt that if the park solution did not become a reality and the Government decided in favor of development, the Commission had an obligation to try to insure, through its review, that the design be the best possible. With working drawings completed and permit application near, the Commission was now at a point to advise the District whether or not to grant a permit. He said that in the past, such approval had always been contingent upon certain assurances. In regard to this project, he felt there had been no convincing assurances that the project would be built as approved; specifically, that the boat basin, which had been one of the features most admired by the members, would ever materialize, or that the rest of the waterfront would be made into park. There was the danger that approving this project would set a precedent and similar developments along the waterfront would occur. Mr. Novak thought that approval could be conditioned on District Government assurances that its land would be used for park purposes. Mr. Burson thought it was time to either reaffirm the recommendation for an all park solution or accept this compromise.

At this point Mr. Netsch said that while he realized that the design itself had been approved before he became a member, he felt he should state his opinion that, architecturally, it did not fulfill the Commission's charge concerning Georgetown. The very romantic, fanciful style, reminiscent of Maybeck's work at the San Francisco Fair of 1915, and particularly the tower in the boat basin, had in his opinion nothing to do with the Georgetown environment. While he thought the site plan brilliant, he considered the development a very elitist interpretation of land use and not appropriate to the waterfront. He cited the Chicago policy towards its lakefront of keeping it open for public enjoyment at all costs.

Mr. Moore commented that the design had been reviewed a total of six times, counting reviews by the previous Commission and the Georgetown Board.

Mr. Novak again asked for a clarification of the Commission's position. The Chairman reinterated that the point had been reached where the Commission should decide how to advise the mayor, keeping in mind the number of questions still open and the previous commitment to an all park solution.

Mr. Chase then stated his feeling that the Commission members had always to keep in mind the interests of not only the citizens of Washington, but of the entire country in making their decisions; he thought that if they did, they would have to disapprove this project. He made a motion to deny approval and it was seconded by Mr. Burson. The Chairman asked for a vote on the motion to recommend denying a permit at this point in time; such recommendation was approved by a majority vote, with Mrs. Myers and Mr. Novak in opposition. Exhibit C-6

b. O.G. 81-47, 3300 M Street, N. W. New commercial office and residential building; preliminary design. Staff member Richard H. Ryan presented this project, noting that it was not before the Commission for permit approval and had not been approved by the Georgetown Board. He said the Board had a problem with both height and design, and the project had been presented several times. After an overly complex design was reviewed and rejected in January, the Board recommended that the architect submit a building with a geometrically simple shape not over forty feet high, the height of the historic Forrest-Marbury house in the same block. Mr. Ryan showed both the old design and a much simplified new one, and all agreed that the new one was a great improvement. Mr. Wright reviewed the Georgetown Board's actions and commented additionally that the side elevation was of particular importance on this site and should be very simple.

Several Georgetown citizens wished to comment. Katharine Sullivan asked that the height be limited to thirty feet and that the bulk and lot occupancy be reduced. Michael Sendar, owner of a bicycle shop on 33rd Street, stated that a forty foot high building would be too high in light of the buildings adjacent to it, of which the Forrest-Marbury house is the only one to reach that height. He also thought the bulk was excessive and the parking inadequate. He observed that in an already crowded area this would bring even more traffic. Mr. Stinson, the architect, was present and commented that Mr. Sindar's objections were based primarily on the obstruction of his wall-high sign. Mr. Sindar denied this. Mr. Netsch asked about the type of occupancy per floor and was told there would be commercial space on the ground floor with offices and residential above. It was generally agreed that the forty foot height would be acceptable, but the Chairman suggested that the architect go back to the Georgetown Board and work out the design and the question of acceptable bulk. The project was not approved.

c. O.G. 81-65, 3222 M Street, N. W., Georgetown Park. Residential development; revised elevations facing Canal. Georgetown Park Associates; preliminary designs. The Assistant Secretary reviewed the project for the new members, who had seen the site on a pre-meeting tour. He said both the Commission and the Georgetown Board had a negative response to the previous scheme, and a simpler facade had been recommended. He showed two new schemes, marked "A" and "B", and said the Board preferred Scheme "A", which was similar to the old building on the opposite side of the Canal, now occupied by the Conran store. The members agreed that it was the better of the two and accept-

able; it was unanimously approved.

The Assistant Secretary then showed new designs for the treatment of the entrances into the project, noting the previous recommendation for a simpler approach. He said the large lanterns had been eliminated, and the paving would be brick laid in a herringbone pattern rather than black and white tiles. The grilles over the upper windows and those around the entrance columns remained. Two out of three of the Georgetown Board members were still skeptical of these, although there was not as much objection to the protective grilles around the trees in public areas. He said the light fixtures within the project had been held in abeyance.

Philip Ross of Western Development was introduced. He commented on the sidewalk pattern, saying an attempt would be made to get adjacent property owners to continue the same pattern along the street and to get matching funds from the District. Turning to the ironwork, he said it would provide protection for the ivy at the entrances and also for the trees in the public spaces. When asked by Mr. Netsch what the purpose of the window grilles would be, he said they would act as embellishment to the architecture. Mr. Netsch said he did not think the architecture needed embellishment, nor did he think the attempt to achieve a special identity for the project to that degree was appropriate to the character of Georgetown streets. He did think the ironwork around the trees served a legitimate purpose and could be allowed. The other members agreed with these observations, and the entrance designs were approved without the window grilles or entrance ironwork.

d. O.G. 81-73, Rear 3256 M Street, N. W. Raze buildings. Staff member Sue Kohler gave the members a brief history of these small structures which the Commission had seen on its pre-meeting tour. She said they were constructed as storage buildings or garages; the earliest was built c. 1880, while the bulk of the construction dated from c. 1920 or later. She said they were of no significant historical importance but were typical of the minor commercial structures along the Canal. The members did not think they made a significant contribution to the historic district, and the demolition request was unanimously approved.

e. Appendix 2, approved.

B. Department of Transportation and National Park Service

1. CFA 10/MAR/81-1, Signage on Theodore Roosevelt Bridge and approaches to Interstate 66; revised designs. The Assistant Secretary recalled that at the January 1981 meeting the members had asked for additional study of a cantilever type sign. Between meetings, the Chairman and the Secretary had worked with the applicant towards a solution. He introduced Richard Lockwood of the Virginia Department of Transportation who reviewed the need for these signs because of the

opening of a new section of I-66. He said the size of the signs had been reeuced since the January meeting and then introduced the designer, Carleton Abbott, who continued the discussion. Mr. Abbott said that he had been able to achieve a more unified design and size for the signs and had also brought models of various kinds of supports for the members to review. He showed a model of a sixty-foot cantilever type, which would require a rather massive vertical support; another of a simple, right-angle frame which spanned the entire roadway; and a third which spanned half the roadway and was anchored at the median strip. Mr. Netsch, who had previously asked for the cantilever study, agreed that it was not practical or esthetically pleasing in this case; he said he preferred the simple span over the entire roadway since the vertical sections were no longer tapered as before. It was also the least expensive version. The other members agreed and this design was unanimously approved, as were the sizes and placement of the signs. Exhibit D

C. Smithsonian Institution

1. CFA 10/MAR/81-2, Smithsonian Castle building; handicapped entrance modification; Mall site. Philip Reiss from the Smithsonian was introduced and told the members that architect Donald Lethbridge had been hired to determine the best place and design for this entrance. It was decided that a location next to the east entrance on the north side of theCastle would be least visible. A canvas canopy for weather protection was shown on the drawings. Mr. Reiss said the location was actually temporary, as a permanent handicapped entrance was being planned in conjunction with the South Quadrangle development. The members had no objections and the project was unanimously approved.

Exhibit E

D. American Battle Monuments Commission

1. CFA 10/MAR/81-3, Pershing statue; intermediate study maquette; one-third full size. Colonel Frederick Badger of the Battle Monuments Commission and sculptor Robert White were introduced to present the maquette and discuss the placement of the statue in the memorial area. It was noted that the walls enclosing the area had been lowered by about two feet, thus changing the relationship between them and the statue, particularly in regard to how much of the statue would rise above the walls when viewed from outside. It was considered important by everyone concerned that the statue not be cut off so that the head would appear to be floating above the wall, unattached to the body. It was suggested that a temporary base be used at first, so that it could be adjusted to the most advantageous height. The members were were all pleased with the maquette, requesting only that Mr. White check the accuracy of the uniform details and the binoculars before completing the final version. Exhibit F

E. Pennsylvania Avenue Development Corporation

1. CFA 10/MAR/81-4, Inspection of Pennsylvania Avenue lighting; review of demonstration, 9 March 1981. The Commission had inspected the new lighting on the Avenue the evening before the meeting, including mock-ups of several versions of the tree light. After seeing the mock-ups, the members decided that the light on a free-standing pole,which had been reviewed previously, should not be used. If any tree lights were to be used, they would prefer the one fastened directly to the tree. It was stressed that this should be done in the simplest way and that the Commission would want to see the final design before giving approval. Exhibit G

2. CFA 10/MAR/81-5, Pennsylvania Avenue Triangle. 6th Street, Indiana and Pennsylvania Avenues, N. W. Office, hotel and housing porject; Westminster Investing Corporation; informal review. The Secretary told the members that this large project had been approved in concept by the board of PADC and was being presented to the Commission at this meeting for informal review only. He introduced Mr. Saul from B.F. Saul Company, affiliates of the Westminster Investing Corporation. Mr. Saul noted that this would be the first major development in the eastern part of the PADC district. He said it was located in a deteriorated area, and stressed the importance of making it both attractive and commercially successful. He said the project would combine three uses; an office building, small luxury hotel, and condominiums. He pointed out the location of these elements, saying that the inspiration for the light colored office section on Pennsylvania Avenue had come from the facade of the old Metropolitan Hotel, formerly on this site. He mentioned also the possibility of including some of the old facades which have been removed from other sites on the avenue and placed in storage. Several late nineteenth century buildings in the area would remain: the Atlantic Coast Line building at the corner of 6th Street and Pennsylvania Avenue, the Apex building at 7th, and the National Bank of Washington at the apex of the triangle formed by Indiana and Pennsylvania avenues. There was some discussion of how and where the old facades might be used, but as this submission was for information only, no action was taken. Exhibit H

The meeting was adjourned at 3:25 p.m.

III. INSPECTION

A. Freer Gallery

1. Inspection of proposed acquisitions; Freer Gallery of Art. After the meeting the members left for the Freer Gallery, where they inspected and approved the proposed acquisitions. Exhibit I

Signed,

Charles H. Atherton

Charles H. Atherton
Secretary

THE COMMISSION OF FINE ARTS

ESTABLISHED BY CONGRESS MAY 17, 1910

J. CARTER BROWN, Chairman

HAROLD BURSON
JOHN S. CHASE
SONDRA G. MYERS
WALTER A. NETSCH
ALAN R. NOVAK
EDWARD D. STONE, JR.

CHARLES H. ATHERTON, Secretary

Exhibit A

708 JACKSON PLACE, N.W.
WASHINGTON, D.C. 20006
202-566-1066

March 20, 1981

Dear Mr. Dickenson:

The Commission of Fine Arts voted unanimously to confirm the appointment of Hugh C. Miller, AIA, of the National Park Service to this Commission's Georgetown Board. The other Board members, the Staff and the entire Commission share my confidence in his technical expertise and good design sense and experience. I know he will make an excellent addition to the Board. We look forward to working with Hugh and appreciate the National Park Services' willingness to adjust his schedule to give us some of his valuable time.

Sincerely yours,

J. Carter Brown
Chairman

Mr. Russell Dickenson
Director
National Park Service
Department of Interior
Washington, D.C. 20240

Exhibit A

THE COMMISSION OF FINE ARTS

ESTABLISHED • BY • CONGRESS • MAY • 17, 1910

708 JACKSON PLACE, N.W.
WASHINGTON, D.C. 20006

Exhibit B

March 10, 1981

Tour for Members of the Commission of Fine Arts

8:30 a.m.

The following site inspections relate to proposals on the Commission's agenda later in the morning:

Depart from Commission offices, 708 Jackson Place, N.W., drive up 16th Street to Mt. Pleasant Street, 17th Street to the Woodner site.

1) Oakwood Commons, 3501-19 17th Street, N.W., new construction of town-house type flats, next to Woodner Hotel, adjacent to Rock Creek Park.

Drive down Rock Creek Parkway toward Georgetown

2) Proposed single family house site adjacent to Park between Porter Street and Klingle Road.

Continue to P Street and cross Georgetown to 33rd and M Streets

3) Proposed commercial/residential building at 3300 M Street, N.W.

4) Proposed razing of small warehouse structures, rear of 3256 M Street, adjacent to Georgetown Park project.

Continue down Wisconsin Avenue to K Street

5) Georgetown Park project, under construction, proposals for exterior details and residential structure on deck facing Chesapeake and Ohio Canal.

6) 3020 K Street, proposed mixed use waterfront complex.

Return to 708 Jackson Place via Virginia Avenue past Sun Oil Station

Exhibit C

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Reprint from Federal Register,

Executive Order 11988

VOL. 42, NO. 101

May 25, 1977

Exhibit C

FLOODPLAIN MANAGEMENT

By virtue of the authority vested in me by the Constitution and statutes of the United States of America, and as President of the United States of America, in furtherance of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 et seq.), the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4001 et seq.), and the Flood Disaster Protection Act of 1973 (Public Law 93-234, 87 Stat. 975), in order to avoid to the extent possible the long and short term adverse impacts associated with the occupancy and modification of floodplains and to avoid direct or indirect support of floodplain development wherever there is a practicable alternative, it is hereby ordered as follows:

Section 1. Each agency shall provide leadership and shall take action to reduce the risk of flood loss, to minimize the impact of floods on human safety, health and welfare, and to restore and preserve the natural and beneficial values served by floodplains in carrying out its responsibilities for (1) acquiring, managing, and disposing of Federal lands and facilities; (2) providing Federally undertaken, financed, or assisted construction and improvements; and (3) conducting Federal activities and programs affecting land use, including but not limited to water and related land resources planning, regulating, and licensing activities.

Sec. 2. In carrying out the activities described in Section 1 of this Order, each agency has a responsibility to evaluate the potential effects of any actions it may take in a floodplain; to ensure that its planning programs and budget requests reflect consideration of flood hazards and

floodplain management; and to prescribe procedures to implement the policies and requirements of this Order, as follows:

(a)(1) Before taking an action, each agency shall determine whether the proposed action will occur in a floodplain -- for major Federal actions significantly affecting the quality of the human environment, the evaluation required below will be included in any statement prepared under Section 102(2)(C) of the National Environmental Policy Act. This determination shall be made according to a Department of Housing and Urban Development (HUD) floodplain map or a more detailed map of an area, if available. If such maps are not available, the agency shall make a determination of the location of the floodplain based on the best available information. The Water Resources Council shall issue guidance on this information not later than October 1, 1977.

(2) If an agency has determined to, or proposes to, conduct, support, or allow an action to be located in a floodplain, the agency shall consider alternatives to avoid adverse effects and incompatible development in the floodplains. If the head of the agency finds that the only practicable alternative consistent with the law and with the policy set forth in this Order requires siting in a floodplain, the agency shall, prior to taking action, (i) design or modify its action in order to minimize potential harm to or within the floodplain, consistent with regulations issued in accord with Section 2(d) of this Order, and (ii) prepare and circulate a notice containing an explanation of why the action is proposed to be located in the floodplain.

(3) For programs subject to the Office of Management and Budget Circular A-95, the agency shall send the notice, not to exceed three pages in length including a location map, to the state and areawide A-95 clearinghouses for the geographic areas affected. The notice shall include: (i) the reasons why the action is proposed to be located in a floodplain; (ii) a statement indicating whether the action conforms to applicable state or local floodplain protection standards and (iii) a list of the alternatives considered. Agencies shall endeavor to allow a brief comment period prior to taking any action.

(4) Each agency shall also provide opportunity for early public review of any plans or proposals for actions in floodplains, in accordance with Section 2(b)of Executive Order No. 11514, as amended, including the development of procedures to accomplish this objective for Federal actions whose impact is not significant enough to require the preparation of an environmental impact statement under Section 102(2)(C) of the National Environmental Policy Act of 1969, as amended.

(b) Any requests for new authorizations or appropriations transmitted to the Office of Management and Budget shall indicate, if an action to be proposed will be located in a floodplain, whether the proposed action is in accord with this Order.

(c) Each agency shall take floodplain management into account when formulating or evaluating any water and land use plans and shall require land and water resources use appropriate to the degree of hazard involved. Agencies shall include adequate provision for the evaluation and consideration of flood hazards in the regulations and operating procedures for the licenses, permits, loan or grants-in-aid programs that they administer. Agencies

shall also encourage and provide appropriate guidance to applicants to evaluate the effects of their proposals in floodplains prior to submitting applications for Federal licenses, permits, loans or grants.

(d) As allowed by law, each agency shall issue or amend existing regulations and procedures within one year to comply with this Order. These procedures shall incorporate the Unified National Program for Floodplain Management of the Water Resources Council, and shall explain the means that the agency will employ to pursue the nonhazardous use of riverine, coastal and other floodplains in connection with the activities under its authority. To the extent possible, existing processes, such as those of the Council on Environmental Quality and the Water Resources Council, shall be utilized to fulfill the requirements of this Order. Agencies shall prepare their procedures in consultation with the Water Resources Council, the Federal Insurance Administration, and the Council on Environmental Quality, and shall update such procedures as necessary.

Sec. 3. In addition to the requirements of Section 2, agencies with responsibilities for Federal real property and facilities shall take the following measures:

(a) The regulations and procedures established under Section 2(d) of this Order shall, at a minimum, require the construction of Federal structures and facilities to be in accordance with the standards and criteria and to be consistent with the intent of those promulgated under the National Flood Insurance Program. They shall deviate only to the extent that the standards of the Flood Insurance Program are demonstrably inappropriate for a given type of structure or facility.

(b) If, after compliance with the requirements of this Order, new construction of structures or

facilities are to be located in a floodplain, accepted floodproofing and other flood protection measures shall be applied to new construction or rehabilitation. To achieve flood protection, agencies shall, wherever practicable, elevate structures above the base flood level rather than filling in land.

(c) If property used by the general public has suffered flood damage or is located in an identified flood hazard area, the responsible agency shall provide on structures, and other places where appropriate, conspicuous delineation of past and probable flood height in order to enhance public awareness of and knowledge about flood hazards.

(d) When property in floodplains is proposed for lease, easement, right-of-way, or disposal to non-Federal public or private parties, the Federal agency shall (1) reference in the conveyance those uses that are restricted under identified Federal, State or local floodplain regulations; and (2) attach other appropriate restrictions to the uses of properties by the grantee or purchaser and any successors, except where prohibited by law; or (3) withhold such properties from conveyance.

Sec. 4. In addition to any responsibilities under this Order and Sections 202 and 205 of the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4106 and 4128), agencies which guarantee, approve, regulate, or insure any financial transaction which is related to an area located in a floodplain shall, prior to completing action on such transaction, inform any private parties participating in the transaction of the hazards of locating structures in the floodplain.

Sec. 5. The head of each agency shall submit a report to the Council on Environmental Quality and to the Water Resources Council on June 30, 1978, regarding the status of their procedures and the impact of this Order on the agency's operations. Thereafter, the Water Resources Council shall periodically evaluate agency procedures and their effectiveness.

Sec. 6. As used in this Order:

(a) The term "agency" shall have the same meaning as the term "Executive agency" in Section 105 of Title 5 of the United States Code and shall include the military departments; the directives contained in this Order, however, are meant to apply only to those agencies which perform the activities described in Section 1 which are located in or affecting floodplains.

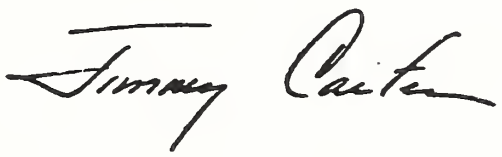
(b) The term "base flood" shall mean that flood which has a one percent or greater chance of occurrence in any given year.

(c) The term "floodplain" shall mean the lowland and relatively flat areas adjoining inland and coastal waters including floodprone areas of offshore islands, including at a minimum, that area subject to a one percent or greater chance of flooding in any given year.

Sec. 7. Executive Order No. 11296 of August 10, 1966, is hereby revoked. All actions, procedures, and issuances taken under that Order and still in effect shall remain in effect until modified by appropriate authority under the terms of this Order.

Sec. 8. Nothing in this Order shall apply to assistance provided for emergency work essential to save lives and protect property and public health and safety, performed pursuant to Sections 305 and 306 of the Disaster Relief Act of 1974 (88 Stat. 148, 42 U.S.C. 5145 and 5146).

Sec. 9. To the extent the provisions of Section 2(a) of this Order are applicable to projects covered by Section 104(h) of the Housing and Community Development Act of 1974, as amended (88 Stat. 640, 42 U.S.C. 5304(h)), the responsibilities under those provisions may be assumed by the appropriate applicant, if the applicant has also assumed, with respect to such projects, all of the responsibilities for environmental review, decisionmaking, and action pursuant to the National Environmental Policy Act of 1969, as amended.



THE WHITE HOUSE,
May 24, 1977

[FR Doc.77-15121 Filed 5-24-77;1:42 pm]

United States Department of Justice
Washington, D.C. 20530

Exhibit C-1

ORNEY GENERAL
EGAL COUNSEL

November 14, 1980

TO: Charles H. Atherton, Secretary
Commission of Fine Arts

FROM: Leon Ulman
Deputy Assistant Attorney General
Office of Legal Counsel

SUBJECT: Legal Memorandum dated November 14, 1980

Titled: Application of Executive Order 11988, Entitled "Floodplain Management," to the Commission of Fine Arts

The Attorney General has directed the Office of Legal Counsel to undertake the publication of selected opinions of the Office. Publication is designed to assist executive branch agencies, the courts, and the bar. The first volume of such opinions covering the year 1977 has been published; publication of the 1978 volume is in process.

It is important that you inform us expeditiously whether or not your agency has any objection to publication of the attached opinion by checking the appropriate box below. For your convenience a return envelope is enclosed. We wish to emphasize that failure to respond within a reasonable time will be deemed as your consent to publication.

This Office will undertake review of the opinion for accuracy of citations, etc., and will subsequently prepare an appropriate topical catchline. In instances involving questions of conflict-of-interest and ethical matters, the opinion will be sanitized to delete identifying details. Minor editorial revisions may also be made. If another agency is involved, we will also consult it.

☐ Publication approved.

☐ Publication not approved.

RECEIVED
THE COMMISSION OF FINE ARTS
WASHINGTON, D. C.
NOV 17 1980
NOTED

U.S. Department of Justice

Office of Legal Counsel

Office of the
Deputy Assistant Attorney General

Washington, D.C. 20530

14 NOV 1980

Memorandum for Charles H. Atherton
Secretary, Commission of Fine Arts

Re: Application of Executive Order 11988, entitled "Floodplain Management," to the Commission of Fine Arts

This responds to your request of September 22, 1980, (which you recently confirmed), for our views on the application of Executive Order 11988, entitled "Floodplain Management," to the Commission of Fine Arts (CFA). Specifically, you ask whether the CFA is an "agency" within the meaning of the Executive Order for purposes of its review of proposed development on the Georgetown Waterfront. We conclude, for reasons set forth below, that the CFA is an "agency" for such purposes, as that term is defined in the Executive Order and, accordingly, that the CFA must comply with its terms.

Executive Order 11988 (Order), signed May 24, 1977, states in the preamble that its purpose is to avoid to the extent possible the long and short term adverse impacts associated with the occupancy of floodplains and to avoid direct or indirect support of floodplain development wherever there is a practicable alternative. It provides:

> "[E]ach agency shall provide leadership and shall take action to reduce the risk of flood loss, to minimize the impact of floods on human safety, health and welfare, and to restore and preserve the natural and beneficial values served by floodplains in carrying out its responsibilities for . . . (3) conducting Federal activities and programs affecting land use, including but not limited to water and related land resources planning, regulating, and licensing activities."

Exec. Order 11988, § 1. To comply with the Order, each agency must evaluate the potential effects of any actions it may take in a floodplain and consider alternatives to avoid adverse effects and incompatible development in the floodplain. If the head of the agency finds that the only practicable alternative consistent with the law and the policy set forth in the Order requires siting in a floodplain, the agency must design its action to minimize potential harm and must prepare and circulate a notice containing an explanation of why the action is proposed to be located in the floodplain. Id. § 2. Each agency, in consultation with the Water Resources Council, the Federal Insurance Administration, and the Council on Environmental Quality, is required to issue regulations and procedures to comply with the Order.

According to information you have provided us, certain citizen groups are now alleging that the CFA must comply with these requirements. The issue has arisen in connection with development of the Georgetown Waterfront, which, you have informed us, all concerned parties agree is located on a floodplain. You suggest that as an advisory agency, rather than a licensing or regulatory agency, your agency should be excluded from the provisions of the Order.

Section 6 of the Order defines the term "agency" as follows:

> The term "agency" shall have the same meaning as the term "Executive agency" in Section 105 of Title 5 of the United States Code and shall include the military departments; the directives contained in this Order, however, are meant to apply only to those agencies which perform the activities described in Section 1 which are located in or affecting floodplains.

It first must be determined, therefore, whether the CFA fits within the definition of "Executive agency" in 5 U.S.C. § 105, which defines that term as an "Executive department, a Government corporation, and an independent establishment." Because the CFA is neither an executive department (5 U.S.C. § 101) nor a Government corporation (5 U.S.C. § 103), it can qualify as an "agency" only if it is an independent establishment. The term "independent establishment" is defined in title 5 as "an establishment in the executive branch . . . which is not an Executive department, military department, Government corporation, or part thereof, or part of an independent establishment . . . ." 5 U.S.C. § 104. In our opinion, the CFA meets this definition.

The CFA was created by Congress in 1910 to advise on the location and development of statues, fountains, and monuments in public areas in the District of Columbia and to advise generally upon questions of art when required to do so by the President, or by any committee of either House of Congress. See Act of May 17, 1910, ch. 343, § 1, 36 Stat. 371 (codified at 40 U.S.C. § 104). Since that time, it has been given additional responsibilities such as advising on the selection of lands suitable for development of the National Capital park, parking, and playground system, and commenting on the plans for public buildings to be erected in the District of Columbia. See 40 U.S.C. §§ 72, 121. It is composed of seven persons appointed by the President, and its activities are financed entirely by the Federal Government. See 40 U.S.C. § 106. It is not a part of an executive agency or independent establishment. Thus, the CFA qualifies as an "independent establishment, and, therefore, is an "Executive agency" as that term is defined in 5 U.S.C. § 105.

We turn now to the second part of the definition of "agency" in § 6 of the Order. This part provides that for purposes of the Order, the term "agency" includes only those executive agencies that perform the activities described in § 1 of the Order which are located in or affecting floodplains. The activities described in § 1 are:

> (1) acquiring, managing, and disposing of Federal lands and facilities; (2) providing Federally undertaken, financed, or assisted construction and improvements; and (3) conducting Federal activities and programs affecting land use, including but not limited to water and related land resources planning, regulating, and licensing activities.

Exec. Order 11988, § 1. The first two activities clearly are inapplicable here. Thus it must be determined whether the CFA "conduct[s] Federal activities and programs affecting land use . . . . " We conclude that for purposes of review of the development of the Georgetown Waterfront, the CFA also meets this part of the Order's definition of "agency."

The CFA's review of the Georgetown Waterfront project is required by the Old Georgetown Act, Pub. L. No. 81-808,

§2, 64 Stat. 904 (1950). 1/ That Act requires the District of Columbia Council, 2/ before issuing any permit for the construction of any building within "Old Georgetown," to refer the plans to the CFA for a report as to "the exterior features, heights, appearance, color, and texture of the materials of exterior construction which is subject to public view from a public highway." Id. This referral is required "[i]n order to promote the general welfare and to preserve and protect the places and areas of historic interest, exterior architectural features and examples of the type of architecture used in the National Capital in its initial years." Id. The CFA must report promptly to the District of Columbia Council its recommendations, including such changes, if any, as are necessary and desirable to preserve the historic value of the area. The CFA's recommendations are not binding, however. The District Council may take such actions with respect to the permit application as in its judgment are right and proper in the circumstances.

In 1979, the CFA promulgated regulations that define its functions and responsibilities. See 44 Fed. Reg. 67050-53 (1979)(45 C.F.R. §§ 2101-2103). With respect to Georgetown buildings, the regulations provide:

> [T]he Commission makes recommendations to the District of Columbia Government as to the effect of the plans on the preservation and protection of places and areas that have historic interest or that manifest exemplary features and types of architecture, including recommendations for any changes in plans necessary in the judgment of the Commission to preserve the historic value of Old Georgetown, and takes any such actions as in the judgment of the Commission are right or proper in the circumstances. [Old Georgetown Act, 64 Stat. 903 (D.C. Code 5-801).]

1/ The Committee reports identified the bill as one which would "regulate the height, exterior design, and construction of private and semi-public buildings in the Georgetown area of the National Capitol . . . ." S. Rep. No. 2115, 81st Cong., 2d Sess. 1 (1950); H.R. Rep. No. 2468, 81st Cong., 2d Sess. 1 (1950). According to the Senate Report, the purpose of the bill was to "preserve the early architecture of Georgetown." S. Rep. No. 2115, supra at 1.

2/ The Act itself refers to the "Commissioners of the District of Columbia" rather than to the District of Columbia Council. Reorganization Plan No. 3 of 1967, 5 U.S.C. App., transferred this responsibility to the D.C. Council.

44 Fed. Reg. 67050 (1979)(emphasis added). Although the regulations' statement of policy specifies that CFA functions "relate to the appearance of proposed projects within its purview as they may be seen from public space," the Commission considers a broad range of factors such as "whether the public need or value of the project or the private interests to be served thereby justify making any change or addition" and "whether the project can be accomplished in reasonable harmony with the nearby area." 44 C.F.R. 67053 (1979). In reviewing and commenting on proposed plans for a particular development, for example, the CFA could recommend that there be no development or a different type of development which would be more in harmony with the nearby area. Thus, although the CFA's primary responsibility is to comment on the architectural plans, fulfilling this responsibility requires consideration of many factors pertinent to land resources planning. Recognizing that the question is a close one, we conclude that the CFA does conduct a Federal activity affecting land use, and, more specifically, that it does engage in land resources planning activities. The fact that the CFA's role is advisory necessarily makes this an even closer question. Nothing in the Order, however, exempts advisory agencies where the activities of such agencies affect land use.

The Order itself supports this interpretation. As noted earlier, the preamble provides that one of the purposes of the Order is "to avoid direct or indirect support of floodplain development wherever there is a practicable alternative." (Emphasis added). Section 2 of the Order directs each agency "to ensure that its planning programs . . . reflect consideration of flood hazards and floodplain management." 3/ These clauses suggest that the Order was intended to cover agencies that conduct land use planning activities, even if the activity may not have a direct effect on floodplain development.

Leon Ulman
Deputy Assistant Attorney General
Office of Legal Counsel

3/ The Order required each agency to issue or amend existing regulations and procedures within one year after the Order was issued in 1977. The CFA has not issued such regulations. The Water Resources Council, the agency charged with continuing oversight of this requirement, now takes the position that the CFA is subject to the Order, although, at least until recently, it has made no effort to bring the CFA into compliance. According to one of its staff members, the Council consistently has interpreted the Order to extend to advisory agencies but has concentrated its efforts and its resources on larger agencies.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE

Exhibit C-2

OFFICE OF THE CITY ADMINISTRATOR

ASSISTANT CITY ADMINISTRATOR FOR
PLANNING & DEVELOPMENT
1350 I STREET, N.W. - ROOM 409
WASHINGTON D.C. 20004

February 27, 1981

Mr. J. Carter Brown, Chairman
The Commission of Fine Arts
708 Jackson Place, N. W.
Washington, D. C. 20006

Dear Chairman Brown:

On October 20, 1980, the District of Columbia Government received a report from the U. S. Commission of Fine Arts on the Georgetown Waterfront development proposal (O. G. 80-155) which urged that "the District Government undertake at the earliest possible time, the necessary steps" to secure the transfer to the National Park System of the District's Georgetown Waterfront holdings.

As the report noted, the District on September 23, 1980 gave the National Park Service a letter of intent over my signature to do just that. The Park Service responded that it was prepared to accept the properties for incorporation into the National Park System. Meanwhile, the District of Columbia Government has initiated the essential process related to phasing out and relocating those municipal functions which occupy our waterfront holdings. I have created an inter-agency task force to phase out these incompatible uses.

The objective of incorporating these properties into the National Park System is shared by the District and Federal Governments. Our task force has begun working with the Federal agencies which have key roles in the transfer of jurisdiction process, namely the National Park Service and the National Capital Planning Commission. Moreover, the U. S. Department of Transportation which provided 90 per cent of the funding for these holdings has advised the District Government that it would have no objection to the transfer of these lands to the Federal Government for park purposes.

The District has also received a firm commitment from the prospective developer that provision will be made to assure that those portions of the Potomac River shoreline at Georgetown remaining in private hands will be open to public access in perpetuity as the District holdings being transferred will be. Thereby, uninterrupted public access to the entire Georgetown shoreline would be assured.

Exhibit C-2

The developer has also agreed to provide design assistance and initial landscaping for the park portions east of Wisconsin Avenue, a significant contribution which will make that section of the park a reality at an early date.

In full awareness of the great interest in this matter expressed by the U. S. Commission of Fine Arts, we will undertake to keep the Commission posted on the activities of the task force. I would also like to give you my personal expression of commitment to achieve the creation of the proposed public park on the District's holdings at the earliest possible time.

Sincerely,

James O. Gibson
Assistant City Administrator

cc: John Parsons, National Capital Parks
George Oberlander, National Capital Planning Commission
Robert Moore, Department of Housing and Community Development
William Johnson, Department of Environmental Services
Thomas Downs, Department of Transportation
Carroll Harvey, Department of General Services
John McKoy, Office of Planning and Development
Alfredo Echeverria, Office of Planning and Development
Herbert Miller, Western Development

your coming.

MS. HEALY: I would be very pleased to work with both the staff and Sunoco, if you would like me to.

CHAIRMAN BROWN: Thank you very much.

We move now to the Old Georgetown Act, and while we are waiting for them to set up, we might take a look at the Appendix. You will notice the ones with the asterisk are the ones that are done, and these are done by the staff, but are here for our ratification, since they are deemed not to be significant enough to take up for review at this time, as a general practice.

May we call on the first submission under the Old Georgetown Act, O.G. 81-72, 3020 K Street, the Waterfront project. Are there any materials they want to bring in?

MR. MEYER: Mr. Chairman, they are in the process of bringing in a model, and I have a number of drawings. In addition, behind the Chairman is a working drawing document.

I would like to, for the record, indicate that the submission before you is not intended to and cannot result in the issuance of a building permit, but it is the final preliminary review of the project, and subsequent to this review, the applicant would, once everything is in order, reappear before you for a recommendation on whether or not the building permit should be issued.

The Commission previously reviewed the design before

Exhibit C-3

you and took an action dated -- each of the members have a copy of this -- dated October 20, 1980, in the form of a letter to Mr. Moore and the District of Columbia Government, the Mayor's designated agent, and in that letter, which you have before you,you realize that the Commission gave a preliminary approval to the design as represented to you this morning, and they also, I might add, stated their hope that this general area and the area adjacent could eventually find their way into parkland, if at all possible.

The staff reviewed the drawings, which are, essentially, working drawings, to dissect what changes might have been made subsequent to your last review and we have detected some very minor changes, some slight subtleties in dimension, and an increase in the penthouse area, somewhat, which I am sure the architect can address far better than I.

With regard to the actual heights of the building, they are very, very close--within inches of waht was reviewed by the Commission previously.

The Georgetown Board reviewed the proposal for you at its meeting one week ago, and Mr. Thomas Wright is here from the Georgetown Board, a member of the Board, to give you a report from that meeting a bit later this morning.

CHAIRMAN BROWN: Before we call on the architect and developer of the proposal, perhaps it would be in order to review quickly, if you can, for the Commission some of the

recent history of this project, since all but two of the members were not here the last time this project came up.

MR. MEYER: Somewhat over a year ago -- perhaps a year and a half, two years ago -- the same applicant proposed a much different scheme architecturally, which the Commission felt was excessively bulky and required a great deal of additional design. Subsequent to that, the Present architect, Arthur Moore, was retained and came up with the basic type of scheme which you see before you today.

The Commission, although delighted with the architectural character at that time, indicated disapproval on the basis of height and bulk and recommended restudy at a lower height, reducting the apparent mass as it affected both the waterfront and the historic district, also taking into account the adjacent Rock Creek Park, and thus you are reviewing this now after several other efforts to improve the architectural quality of the project, and to reduce the height and the apparent mass of the project, resulting in the October action.

One of the concerns, of course, in the whole affair has been the danger of flooding through the site and its proximity to the Potomac River.

Maybe Mr. Atherton would like to comment on that.

CHAIRMAN BROWN: Are there any developments since the last meeting of the Commission?

MR. ATHERTON: Mr. Chairman, as you know, the Commissior

has been aware of the presidential Executive Order concerning federal agency participation in the development of the flood plain areas, and it has been the opinion of the Commission for sometime that as an advisory agency on architectural features of the complex proposed for Georgetown -- the actual licensing authority would be the District of Columbia Government -- that the Commission was not subject to the provisions, that it is exempt from this Executive Order. However, at the time this was last presented to the Commission, this issue was again raised by a number of people attending the meeting and representing the community, and as a result of the concerns they expressed, the possibility that this is an issue that might come up again, the Commission wrote to the Justice Department asking for an interpretation of this Executive Order and whether or not the Commission was, indeed, subject to its provisions.

We have received a reply from the Justice Department and it is their opinion that this agency does fall within the provisions of the flood plain management Executive Order.

Essentially what this Executive Order does is direct agencies to -- I think it is best to quote from it -- ". . .to avoid direct or indirect support of flood plain development wherever there is a factual alternatige."

That, of course, is the basis for this thing. One of the requirements of the Executive Order is for this Agency

to develop regulations pertaining to Commission actions in the flood plain area. We have not had a chance to study that sufficiently and take any action along those lines.

I just bring this to your attention at the present time.

CHAIRMAN BROWN: Thank you very much.

The townhouses on the far right are part of the overall scheme, but are not coming before the Commission today; is that right?

MR. MOORE: That is right.

CHAIRMAN BROWN: And then the park that is bermed up on this side is, again, not strictly speaking, in the jurisdiction of the developer. It is not in their control.

MR. MOORE: It is owned by the Department of Transportation, D. C. Government. We have, of course, offered to landscape it.

MR. MEYER: I should point out we have a letter of intent from the city government, signed by James Gibson, indicating that they expect this to become park and they expect it to be turned over to the National Park Service at some point. It is not a fact yet.

MR. NETSCH: You mean just this parcel?

MR. MEYER: This portion here that goes, substantially, to Key Bridge, and then, of course, there would be special arrangements with the public easement along the edge of the

water, which is essentially private property. This type of agreement has yet to be finalized, to the best of my knowledge.

I should also point out for the record that the Commission did visit the site this morning, did walk out to the site, and that they are quite familiar with the characteristics and the visibility of the site, both from a visit this morning and a visit in December.

CHAIRMAN BROWN: You have an aerial photograph of the entire complex, from the bridge down?

MR. MEYER: This flag represents the site and the Commission this morning got out of the van at this point. This is the concrete works, and the site generally spans one block on the other side of Thomas Jefferson Street.

CHAIRMAN BROWN: What prospects are there to the west of that? At the moment it is a car impoundment lot; right?

MR. MEYER: It is District of Columbia land -- environment services, garbage trucks, salt -- the whole business.

As you know, Mr. Moore, the architect is here, and I think he can perhaps, especially for the new members, quickly sketch out the essential concept and features of the project, and then, I would hope, address specifically the changes since the Commission gave its October, 1980 approval to the preliminary, and also he is accompanied by consultants to discuss the landscape and parkland which would be a part of and adjacent to the project.

MR. NETSCH: And then we will hear from Mr. Wright?

MR. MEYER: Yes, from the Georgetown Board.

MR. MOORE: There was, as Don mentioned, a proposal to have a very large building there on the waterfront. We felt that it was important to break up the building into a series of smaller elements by bringing -- these are dedicated streets, but not actual streets -- they would actually become new streets. Here is 30th and this is 31st, and we would introduce what is not there now. You saw the site as a giant house there. We would build a new street, take Thomas Jefferson into the site, on private land, and wind up stepping it down into a boat basin, sort of nice ground steps going to the water, and this would be a boat basin and boats would come in and out of here and there would be flood control gates under this area here.

We feel there is really a mixture of scales here. This is an unusual site. We wanted to introduce some quality of Georgetown, with townhouses, row houses, that type of scale treatment that I can show you in some depth, if you would like, and, in addition, we felt it had sort of a monumental aspect due to its position on the river, so that the area down here, in terms of its materials, it is more formal, and, in addition, we felt that Virginia Avenue, which presently, you know, goes down into the Washington monument and which is planned, but not built to here, should be taken through the project in order to

join up with the foot of Wisconsin Avenue, so that we would have several ways of walking around the project, and that then in terms of mass, we would step the project down, as you can see, and this, as you can see, is essentially what we presented about a year ago.

The Commission gave us an approval after we did reduce some of the mass and height; they did give us their approval as to the general concept, as to massing and height. These have not changed. 68-1/2 feet is the height at the highest point, and we have maintained all of the heights and the footprints. Then in the fall, in October, we presented a series of elevation studies, and without going through all of them I will show you one, which is the treatment of this area right here, which shows what the architectural treatment is. We showed the materials and went through all of the various facades. Basically, what we have done is we have taken that approval in October and turned it into the working drawings you see behind you. These are filed for permit. These are final drawings and are filed for permit.

The reason this is called a preliminary review is because it has not cleared the zoning,but we know it will clear the zoning because it is less than half of what you could build here. It is a miniature of what could actually be allowed to be built here.

MR. NETSCH: Your drawings are voluminous. The

upper band, is that concrete?

MR. MOORE: This is brick.

MR. NETSCH: Where is the concrete?

MR. MOORE: There is no concrete. It is brick and limestone.

MR. NETSCH: I am sorry -- where is the limestone then?

MR. MOORE: There is some limestone trim around these openings here. It is a small accent kind of thing.

MR. NETSCH: An edging?

MR. MOORE: Edging, right.

MS. MEYERS: What about the columns?

MR. MOORE: The columns are concrete, but they would be treated with a special -- it is like thoroseal, but it is a special smooth covering which makes them very similar to the limestone coloration.

CHAIRMAN BROWN: That is two-tone brick?

MR. MOORE: No, one tone of brick and limestone.

CHAIRMAN BROWN: You mean the lighter things are all limestone?

MR. MOORE: These are all brick; that is all brick. The darker area is glass.

As I was saying, this really is a final approval and we have worked with the two approvals that we were given by the Commission. The changes that occurred are relatively tiny.

The largest change was in the penthouse, which at the last moment an emergency generator became necessary for the apartment house, and it is shown here in this drawing. This color represents what is on the model, and then there was a change here basically for the emergency generator. The blue indicates areas where it was reduced and the red where it is increased. The dashed line became what is permitted by zoning.

MR. MEYER: The model doesn't reflect that precisely.

MR. MOORE: No. I have a little model right here. This is the change. So that is principally the only change we have made in the Commission's approvals that we have received.

MR. NETSCH: I understand the access from the Potomac has changed, or am I wrong?

MR. MOORE: What is shown on the drawings is, basically, a temporary treatment along this edge. On the seawall we have to deal with the Corps of Engineers and that process is not very quick, but this is what is intended.

MR. NETSCH: If I understand you correctly, what you are saying is the drawings reflect a temporary reality regarding the seawall, but that you intend to have those access points for power boats, subject to approval of the Corps of Engineers.

MR. MOORE: Correct. The Corps controls the sea-

wall, which is in a very deteriorated condition right now, and we have to deal with them to make the repairs.

Actually what we feel is new, and the only thing we would like to offer is that we have done a preliminary master plan of the areas around this. This is occupying about half the land area that is privately owned. Another half will be in public space, plus we have offered, in fact, to landscape this area over here, and we have produced a master plan which, if you would like, we could review.

I have a landscape architect with me.

CHAIRMAN BROWN: Good.

MR. NETSCH: I believe we should do that.

MR. MEYER: This is Joe Brown from EDAW.

MR. BROWN: This is a development of the drawing that I believe two of you remember, the 12 foot drawing which goes from Rock Creek to Key Bridge, and, as Arthur mentioned, the privately held land in here is about six acres, the footprint of the built land being about three acres, so about half of that privately held land is being turned over to open space and park, public use, in terms of street malls, the water basin, the promenade, this area for the band shell, and the street promenade.

This area between 31st and Wisconsin the developer has offered to develop in this fashion, and just to explain that a little bit, we are very excited about sort of rediscovering

Virginia Avenue through here. As Arthur mentioned, it terminates back to Wisconsin. We have designed, with Park Service review and consent, a terminus to Wisconsin Avenue, which becomes a sort of major portal of water and people entrance to and from Georgetown and the whole waterfront. Virginia Avenue cuts through here, a void, I think, and caused some of the scale problems the Commission was earlier concerned with, and then it shapes into this nice meadow space, with surrounding mounds of gravel, walkways, flowering cherry trees, and in many ways looking like the Tidal Basin, only much smaller. The gazebo then terminates the special paving treatment of Virginia Avenue. I believe the Commission, two of the existing members have seen some of our special paving mosaics for Pennsylvania Avenue, in front of the Old Post Office. This is a similar kind of proposal.

Then you move along the prominade and you have the major buildings moving up and down on several levels. This is a combination of wood and unit pavers, unit pavers above and wood below, so you can move up and down that level, and this sort of floats in and out and you move here to this band shell, and again the terminus to the street.

We tried to create this termini, this one being the most important, this being next important, and we move on down to Rock Creek and the preservation of the Rock Creek corridor, reminding the Commission that the developer owns to

the waterway, and it is proposing to build only to 62 feet of it and preserve the existing trees.

We have completed our tree survey of this area and I can go into some detail on that, if you like. It is really an idea of preserving a soft landscape for people's use, informal people use, a gazebo terminating the diagonal and the eliptical relationship and then a harder streetscape for heavy people access around the promenade from the water and connecting to Thomas Jefferson Street.

CHAIRMAN BROWN: There seems to be a disparity between that drawing and the model when it comes to the entrance of the boat place. Which supersedes which?

MR. J. BROWN: This does.

CHAIRMAN BROWN: I fell off your see-saw.

MR. J. BROWN: I am sorry. This is the entry point and this, in essence, is a bridge.

CHAIRMAN BROWN: You are giving up the second entry point?

MR. J. BROWN: The second entryway is just a waterway entry below grade.

MR. MOORE: It was only just an intake to flush the basin.

MR. NETSCH: No boats, in other words?

MR. MOORE: That is right, no boats. The boats go in and out here, and that remains as it was before.

CHAIRMAN BROWN: So it berms up -- What is behind the change? Why does it stick out further, and so forth, as a kind of apron?

MR. J. BROWN: We have tried to articulate the opening a little better, and again this is in the master plan. This doesn't show in the construction set, so it is not detailed entirely yet, but to try to get this thing to work a little bit more easily, we have it moving as a mechanism that goes back and forth this way.

MR. MOORE: This is a floating dock here, which is this thing here.

MR. NETSCH: That is subject to approval of the Corps of Engineers?

MR. MOORE: Yes. That is why we are not very specific about that right now.

MR. NETSCH: The size of shops, just out of curiosity, on the main floor vary from what to what?

MR. MOORE: The size of shops?

MR. NETSCH: Aren't there stores?

MR. MOORE: There are stores,but they are not leased.

MR. NETSCH: Are they, essentially, small?

MR. MOORE: Small users around the boat basin. I have a sketch here showing a walkway, a promenade around the boat basin, on two levels, which would lend itself to rather small stores coming off of these walkways.

MR. STONE: What is the proposed width of the promenade at the lowest level?

MR. MOORE: Eight feet at the lowest level.

MR. STONE: As illustrated, it seems rather skimpy in relation to the other pedestrian spaces.

MR. J. BROWN: I think there is a variety we are trying to get there. We don't want to make a huge promenade. I suppose it could be eight to ten feet.

CHAIRMAN BROWN: Any further specific questions by the Commission, or do you want to wait until you hear the other testimony?

MR. NETSCH: I would like to hear the rest of the testimony.

MR. MEYER: Mr. Wright is here from the Georgetown Board. This is Tom Wright, who has been with the Georgetown Board for a number of years.

I would like to introduce two new Commission members, Mr. Novak and Mr. Burson.

MR. WRIGHT: I am glad to have a chance to meet you.

The Georgetown Board has found that the present designs conform to the previous preliminary designs. Arthur, although the Board didn't mention it, I, myself, hoped that you could put the emergency generator somewhere else--not under water, but somewhere else.

MR. MOORE: I indicated there was a possibility we

could do that, if the Commission thought it important.

MR. WRIGHT: We had not felt that the height of these two penthouses was objectionable, but I think the width of that would be --

MR. NETSCH: In other words, the Board passed this proposal?

MR. WRIGHT: We reaffiremed our previous approval.

MR. NETSCH: Did you reaffirm any interest in the park?

MR. WRIGHT: Yes, we did.

MR. NETSCH: So we still have reaffirmed your interest in the extension of the public lands into the total master plan?

MR. WRIGHT: Yes.

MR. NETSCH: What opportunity does the Board have to see that such things like this can happen, instead of having an impoundment of cars at this location? What authorities do you have to encourage that?

MR. WRIGHT: I can't predict, really, waht the District Government is going to do,but I think or I understand that there are negotiations going on, and I think the staff is closer to the negotiations than the Georgetown Board is.

MR. MEYER: I think the District Government has made that commitment in a letter from Mr. Gibson to this Commission.

There is a representative of Mr. Gibson's office

here, Mr. Bastide, if he would care to address that question.

This is Mr. Bastide, from the Municipal Planning Office.

MR. BASTIDE: Good morning.

Your question was what assurance would the Commission have. Under the Old Georgetown Act the District Government has to submit to the Commission of Fine Arts any proposals for the review and advice of the Commission prior to any building permit. As Mr. Brown knows, any government proposal has been submitted --

MR. NETSCH: It is hard for me to believe a car impoundment area was submitted to this Commission for approval and received it.

MR. BASTIDE: Perhaps that was one that was overlooked, that that was another agency that did that and we weren't aware of it.

CHAIRMAN BROWN: We have written to them in rather strong terms and we have worked with them to find another solution, and they have assured us it is temporary. In the District you get some rather lengthy temporary solutions.

MR. BASTIDE: Our permit was for five years and, hopefully, it will soon be up. As you can see from Mr. Gibson's letter, we are committed to all removal of unsightly uses, and I am talking about west of 31st and Wisconsin Avenue, from publicly owned lands. That is from 31st to Key Bridge --

actually about three lots to the west of Key Bridge -- that is owned by the District Government, and the proposal will be submitted to the Commission for their review and approval.

MR. NETSCH: You are in favor of this extension of Virginia Avenue, as proposed in this master plan?

I think it is lovely. It is a nice idea.

MR. BASTIDE: That is an existing street and the right-of-way would have to be closed in order not to have it, so what they are proposing to do is a matter of right; it is not a matter of policy of the District, so obviously if that is there and you like it --

MR. MOORE: That is on private land, from here to here.

MR. BASTIDE: To this point is public.

CHAIRMAN BROWN: Thank you. Any other questions?

You will be here if something else comes up?

MR. BASTIDE: I'm sure.

CHAIRMAN BROWN: Mr. Wright, you have completed your review. We might open it now to representatives of the community who would like to speak.

MS. SULLIVAN: Good afternoon. I am Kathryn Sullivan, Advisory Neighborhood Commission for Georgetown and for the Board, the Citizens Association of Georgetown, and co-chairman of the Committee for Washington's Riverfront Park, and I would like to say welcome to the new members this morning,

Mr. Burson and Mr. Novak.

To briefly state the case for a total park, Georgetown Waterfront, by definition and by zoning, extends from M Street south to the Potomac River and from Rock Creek to Key Bridge, which comprises about 90 acres, exclusive of streets and the canal. More than 70 acres of this total land is being or has been developed with major construction projects. Good urban planning requires that there be some open space remaining to compensate for the massive over-development, provide much needed recreational opportunities, visual enjoyment, fresh air, relief from overwhelming traffic congestion and noise.

The District of Columbia recognizes these needs and, as you have heard, offered its land, a strip about 140 to 160 feet wide, running from 31st Street to Key Bridge, which has been offered by the National Park Service as a part of the national park system.

The citizens of this City, under the leadership of Mayor Barry, want the remainder of this waterfront land, the only land of sufficient dimensions as water-oriented recreational park. It is a small percentage of the land in the waterfront area.

You are all familiar with this magnificent spot on the river, with the dazzling view downstream to the monumental area, upstream to the Palisades. It is the only strip of the

riverfront area as far as Cumberland, Maryland, that is not part of a national park system. It has always been destined by this Commission, the National Capital Planning Commission, the Department of Interior, to be a park to be enjoyed by the citizens of this City, the metropolitan area, and throughout the nation. For all of these good reasons, we have worked for the last three years to have this as a park. We ask your support today.

It is my pleasure to introduce Mr. Donald Shannon, President of the Citizens Association; Commissioner Judith Bonderman, Mr. Lawrence Stevens, consultant for the National Committee of Urban Associations; Mr. John Woodson, Federation of Citizens Associations; Mrs. Sliffer, Committee of One Hundred, and Mr. Thomas Perot, Vice President of our Association, and then we want to be sureall of the citizens are here, Mr. Chairman, who are generally identified with a little green tree in their lapel and we ask that they have a chance to identify themselves and just briefly say why they are here, or at least be recognized in some way.

MR. NETSCH: Before that is done, however, may I ask you a technical question?

MS. SULLIVAN: Yes, sir.

MR. NETSCH: What has this committee or other committees done to purchase this private parcel? I gather we have, or you and I share a problem, you know, between private

property and public property, and since this cement plant is on private property, has the community made any effort to purchase this as a pay-back gesture to the waterfront?

MS. SULLIVAN: That is one of the facets of this that we are working on. We have made some approaches in that direction. We feel that a great deal of expenditure of money may not be necessary, but we certainly have that idea in mind.

MR. NETSCH: Because a large effort has gone into, as you know, into this by this developer and it constantly increases the costs.

MS. SULLIVAN: The developer has -- well, they have been working on this about three years, and they are well aware of the extensive opposition, and, as Congressman Stark said last year, he agrees there are private rights to lands, naturally, but there are some circumstances where the land is so important for the welfare of the citizens, the nation, the beauty of this capital, that that is the overriding factor, with which we agree.

MR. SHANNON: I am Donald Shannon, president of the Citizens Association of Georgetown.

I have copied some words from the memorial plaza which the Commission has approved earlier at 14th and Pennsylvania, and the statement by President Kennedy is "More than any other city, more than any other region, the nation's capital should represent the finest in living environment

which Americans can plan and build."

I think that we should get back to the basic reasons for our being here. I think the Commission has responsibility here in two areas: the Georgetown Act, which calls for some recognition of the historic district and the Shipstead-Luce Act, which I think governs, because this property faces the river.

I think on both of your responsibilities the best answer that has ever been proposed for this is an all park. I don't think that it says anywhere in your statute that you have to insure a profit for the people who are involved in making this. I remember last week when the Georgetown Board told a small businessman in the 1600 block of Wisconsin that they didn't like what he was doing and he said it would probably mean he couldn't carry out the project, and Mr. Wright said, in effect, "we have torpedoed a lot of projects", and I think this is one thing that anybody who buys property in an historic district has to recognize.

This proposal, it pays no regard whatsoever to the historic preservation district. I think if the object of the Georgetown Historic Preservation District were to memorialize the 1933 Chicago World Fair, this would be a winner, but this thing has nothing to do with America in the 18th century, which I think is the origin of the historic district, and I think we have all agreed that by some wonderful stroke of luck this

property on the waterfront has remained almost the same since the founding of Georgetown -- there has never been any development on this, anything to speak of, until the very late period when you got a concrete factory built here, long after the use as a waterfront had gone and long after a great deal of this land had been filled in.

Essentially the Georgetown waterfront, if you are talking about history, was K Street, and this thing, I just say you cannot under any concept justify this for historic preservation, and I think from the standpoint of the Shipstead-Luce Act, again it is an excrescence. There was one time when the developers were first talking about this, and they really did call this thing a possible link between Watergate and the Dodge Center. I mean if that is the objective, I would say it does well, but that is as far as it goes.

I hope that you will say that there is not to be development here. I think that the only government body which has any power of aesthetic judgment such as is involved here, I think that is what they should say--that there be no development.

I have a letter from the Mayor supporting the project. We have had the support of Congress, as you know --

CHAIRMAN BROWN: Wait a minute. Clarify "supporting the project".

MR. SHANNON: Yes, supporting the park -- supporting

the project.

We have the new Chairman of the Senate Appropriations Committee declaring publicly that this is no place for a building, and I think he has, or I hope he has some means of carrying out his intentions here, but regardless of all of that, I think your body is the only body which can make an aesthetic judgement on it, and I would certainly hope that you would say to the citizens of this City and the citizens of the country that this in no way meets the requirements of your Commission.

Thank you very much.

CHAIRMAN BROWN: Thank you very much.

MR. MOORE: May I make one clarification? The Mayor's letter supports publicly owned land in the park.

CHAIRMAN BROWN: This is a question of fact that I think would be useful to run to earth. Do we have any written evidence as to the attitude of the Mayor toward this project?

The architect says the Mayor's letter refers only to the already publicly owned areas. This is a question of fact to be determined.

MS. SULLIVAN: We have a letter here.

CHAIRMAN BROWN: Let's enter the Mayor's letter into the record.

(The letter is as follows:)

* * * * COMMISSION INSERT * * * *

Exhibit C-5

MS. SULLIVAN: "In response to your recent request, I am pleased to reiterate my support for a park on the Georgetown Waterfront. In that regard, I have supported the transfer of the District-owned property to the National Park Service for use as a park."

MR. NETSCH: It is rather ambiguous.

CHAIRMAN BROWN: This belongs to Mr. Shannon, but I think it would be nice to have that in the record.

All right, who is next?

MS. BONDERMAN: I have something to hand out here. We have been looking at the area and I want to have everyone see what it looks like under water.

I am Judith Bonderman, and I appear on behalf of the ANC. I would like to address today the unique opportunity we have to guide the property of the City by recommending that the entire Georgetown Waterfront be maintained and given over to the National Park Service. Your past concern that this valuable site be in the public domain was based primarily on its potential for enhancing Washington's beauty and dignity as the nation's capital. However, environmental considerations are also appropriate and in the case of the Georgetown Waterfront environmental considerations are required by national policy.

The proposed mixed use development lies entirely within the hundred year flood plain of the Potomac River. As

these photographs so vividly portray, the area has been seriously inundated at least three times in the last 50 years.

The Federal Emergency Management Agency, that agency responsible for federal insurance and disaster relief, has indicated - quote - because of the past history of flooding and potential for serious flooding in this area, we believe that full consideration should be given to the park or green space concept as the wisest and soundest flood plain management for this waterfront area.

We have said at previous Commission meetings that we believe that the Fine Arts Commission is covered by Executive Order 11988, which requires all federal agencies to - quote - avoid direct or indirect support of flood plain development whenever there is a practicable alternative.

It would be inconsistent for you to support an all park treatment of the area and simultaneously to approve a design which would lead to the irrevocable development of the land before the park alternative can be fully explored. The Commission of Fine Arts cannot fulfill its obligations under the Executive Order by analyzing the situation solely in terms of design; it must take into account environmental and ecological factors under the flood plain Executive Order.

The developer's assertion that he will flood-proof the buildings also sidesteps the fundamental policy question, and that question is is there a compelling reason to locate

a development right in the middle of the flood plain of the Potomac River. The answer is clearly no, and we hope that you will wisely set an example for the nation by denying approval of the proposed development.

I would like to add, also, that during the presentation I heard that the boat basin entrances were contingent upon Corps of Engineer approval and, of course, the Corps of Engineers, in granting that approval, would also have to take into account the flood plain Executive Order of the federal agency, and I was wondering, since this seems to be a major component of the design, what the developer and architect would plan to do if they are unable to get Corps of Engineer approval.

CHAIRMAN BROWN: I think that is a just question. Maybe we could ask the architect now if there are contingent plans.

MR. MOORE: The contingency would be that we would have, basically, a contained lake, I suppose, if they would not allow us to have that basin entrance. Our preliminary discussions with the Corps indicate that there won't be any problem, so I hope that would not be the case. I can't deliver to you any confirmed thing.

CHAIRMAN BROWN: How would you get water into the lake?

MR. MOORE: Well, you probably would pump the water.

It would be treated as a swimming pool, if it was a retained type of wall.

CHAIRMAN BROWN: It would be filtered and circulated?

MR. MOORE: Yes, filtered and circulated and it would be treated accordingly. I hope that would not be the situation, and there is no indication from the Corps that this is not a readily approvable thing -- just that we haven't gotten that process finalized.

I can also offer you some examples of how we would take care of the flood control problem, if you would like to see them.

CHAIRMAN BROWN: Since we are talking flood control, perhaps this is a relevant moment to take that up.

MR. MOORE: We have always been rather charmed by Harbor Place fiberglass, which is also a controversial development on the waterfront in Baltimore. They have a series of little bollards like this. The notion is to take those -- I will show you this here -- and these would be about 14 feet high. They have slots in them, and these are prefabricated systems of metal panels that sit down in these slots and has a small little tube around its edge, which is activated by a CO^2 charge and seals it fine. It is an operation in dozens of places around the east coast, and we would have those around and patrolling these openings, and on the working drawings we show these.

CHAIRMAN BROWN: Where are these stored?

MR. MOORE: Probably in the garage.

CHAIRMAN BROWN: How many of them would there be?

MR. MOORE: Well, we have them at the openings here and then a series of them around here, because we are trying to keep this as open as possible, so when you come down Thomas Jefferson Street you will see right through, and the advantage of our project is, of course, we are opening up vistas.

CHAIRMAN BROWN: That doesn't show in that drawing. Maybe we should review the working drawings.

MR. ATHERTON: They are indicated in the working drawings. We have reviewed them carefully.

MR. MOORE: They are little bollards that appear at the entrance.

MR. NETSCH: How tall are they?

MR. MOORE: About four feet.

MR. NETSCH: This would work both for the park or your project.

MR. MOORE: Precisely. The point is it is protection, and, I think, in a rather decorative way.

MS. BONDERMAN: If I may interrupt for one last time? I was at a presentation made a week or so ago to the Federal Insurance Administration by the developer concerning the flood control techniques just described and it was my understanding that the projected height of the one hundred year

flood, which is the base flood we are talking about, was something between 17 and 18 feet. Maybe I am missing something, but how does this four foot barrier take care of that?

MR. MOORE: The land is already there and the land in this case is bermed up here so that the land is approximately 13 and a half, and that would give us, with the four foot barrier, about 14 and a half. We are not starting at zero.

MS. BONDERMAN: And these townhouses here would be protected in a different way?

MR. MOORE: That is right. They would be protected here, here, and here.

CHAIRMAN BROWN: Thank you very much.

Who is next?

MS. SULLIVAN: Mr. Stevens.

MR. STEVENS: Good morning. I would like to just comment briefly on the widespread report for the all park use of the waterfront. I am a consultant with the National Committee for Urban Recreation and last year we circulated a statement supporting all-park, and it was signed by 25 organizations, including the National Audubon Society, the National Recreation Parks Association, National Urban Coalition, National Council of Negro Women, and others. I would like to leave that with you.

Then locally, of course, we have the support of the D. C. Coalition, the D. C. Citizens Planning Coalition, the

Federation of Civic Associations, and many of the neighborhood advisory commissions, The Commission of One Hundred for the Federal City, Wisconsin Avenue Corridor Commission, and petitions signed by citizens from all walks of life.

I would like to mention, also, last fall we held a fund-raising city-wide rally at the Wisconsin boat house adjacent to the area in questionand we had some 500 people there, including Mayor Barry and Senator Hatfield. I think it is safe to say there is very broad support for the project, for the all-park project. I think it is also pertinent to note that the National Urban Recreation study prepared by the Department of Interior in 1978 emphasizes that the two highest priorities in public recreation are close-to-home recreation opportunities and water oriented recreation, which would happily combine with the Georgetown Waterfront, and I think it is also very timely to remember that with the cost of energy rising as rapidly as it is that more and more people are going to be seeking recreation close to home, and the records of practically all city recreation departments show a very substantial increase in use of close-to-home facilities within the last few years, and I think this is going to increase at a very rapid rate.

I would like to also leave you with a copy of the letter that the Committee sent to the new Secretary of Interior, James Watt, in which we urge him to support the all-

park use of the waterfront and urge him not to release the easement which Interior holds on the area east of 30th Street. I would submit these, also, for the record.

I would also just like to submit for the record a statement by Dr. Blackwelder, the Washington representative of the Environmental Policy Center. He, unfortunately, could not be here today, but I ask this be submitted for the record.

CHAIRMAN BROWN: We will be happy to put it in the record.

Who is next?

MS. SULLIVAN: Mr. John Woodson, representing the Federation of Citizens Association.

I am not sure he is still here. I am sorry, he had to leave.

Mrs. Sliffer, Committee of One Hundred.

MS. SLIFFER: I was surprised to hear my name called. I didn't have any plan to present comments.

The Committee of One Hundred works through sub-committees and since I have been chairman we have been working on this matter. However, I know that Mrs. Row did make a statement in support of the entire park solution prior to the time I became chairman. We are sympathetic with protecting the waterfront for public use.

Speaking for myself, I am concerned about too many boutiques, too many small stores in Georgetown, where we have

that whole area behind the Rive Gauche, which is going to be filled with stores, and I am afraid that with many more additional stores the ones on the major streets will be adversely affected.

So I thank you for a chance to speak and we certainly support, if possible, an all-park solution. I am concerned about the matter of flooding, also, but we also appreciate your good urban design.

CHAIRMAN BROWN: Thank you very much.

MS. SULLIVAN: Mr. Chairman, I wonder if you would be so kind as to ask the citizens that are here to stand. They should all be wearing green trees. There were about 45 of them, but some of them have gone. But could you give us a few minutes to say who they are?

CHAIRMAN BROWN: I am afraid we are not going to have time for further statements, but I think if you would give your name and affiliation for the record --

MR. ALEXANDER: May I say a few words?

MS. SULLIVAN: I am not finished yet-please.

I think, Mr. Chairman, you might like to see the number of people we have from Georgetown who support the park plan.

MR. ALEXANDER: Mr. Chairman, and greetings to the new members of the Board.

I would like to say I was formerly Public Affairs

Counsel of AIA in New York for six years, the Long Island Chapter, and I have been a resident of Washington, of Georgetown, for ten years. We have an array of great talent and very distinguished designers, Skidmore and others, who are here to look at this historic waterfront.

We have seen all kinds of architecture in Washington, monumental, creative, innovative, mediocre and what not. A great deal is at stake. I don't want to use the cliche that Georgetown is just one of the great villages of the world. This waterfront means a great deal, not only to Georgetown, but all of Washington, as a nation, and those of us who have canoed up here and been around here, we realize that this is a very precious thing.

Now, at AIA meetings, the Long Island Society Chapter in New York, we showed slides and distinguished architects from all over came and showed slides of what is being done to restore our waterfronts all over the world -- London, England; Houston, Texas, and so on. In Minneapolis, where I spent some time, there was a little band shell and boats came up and listened to concerts and there were people in sail boats and canoes and they were able to enjoy the concerts.

Now, I can envision not just a plain park, and my suggestion is that this group here, which I am part of, in a sense, should develop an alternative program and this program

would have a park, the usual jogging paths, tennis courts, but in addition to that it should have little band marinas, little shells for outdoor concerts, possibly little cafes, low scale. But, gentlemen, look around you -- take a real trip, a walking tour. I did this with a church group last year. I mean what we have here is sort of a kind of Bronx on the Potomac growing up about us -- high density.

Gentlemen, let's not make this a Disneyland on the waterfront, a Disneyland on the Potomac. So I suggest that we have an alternate plan, that this group have a national competition among our talent, our young architects at colleges and universities, and professors, and come up with an alternative program for a park with people, with amenities.

MS. SULLIVAN: Mr. Chairman, an example of beauty on the river --

MS. AUCHINCLOSS: My name is Janet Auchincloss, and I am the captain of the Women's Rowing Association at Georgetown. All I know is that this area of land is something that has become ver- important to quite a large group of people, the Georgetown area students, as well as members of different rowing associations around here, and I, for myself, am very against this whole thing, and I think one really important aspect in the whole idea of development is the fact it is a city and we have a lot of atheletes in the city and there is a great need for parkland and areas where people can just get

out their frustrations and maybe there will be less violence in the City -- I don't know -- but this area or this idea of development for this area is really hard on all of the athletes in the City, especially the students, and I am just here to represent that group.

MS. SULLIVAN: We do have a representative from the Advisory Neighborhood Commission in Foggy Bottom, Mr. Churchill.

MR. CHURCHILL: I have a very brief statement. Our Advisory Neighborhood Commission borders the Georgetown neighbors, and I have been authorized to present this statement:

The Foggy Bottom Advisory Neighborhood Commission has affirmed its support for a park along the Georgetown waterfront on several occasions during the past two years. Some of the considerations which have prompted this position have been, one, the suitability of any development on the waterfront fromthe standpoint of scale and architectural compatability; two, the negative impact any development would have on the already strained traffic situation in Georgetown and such surrounding neighbors as Foggy Bottom, and the west end, and, third, the capacity of any development on the waterfront to withstand the periodic flooding of the Potomac River.

We respectfully urge you to take these and other factors into account in making any recommendations about the

future of the Georgetown waterfront.

This is signed by our Chairman, John Norris.

MS. SULLIVAN: We also have George Magano, from the Pallisades, and our own Chairman, Mr. Capulte, and Dr. Blackwelder.

CHAIRMAN BROWN: At this point I think that we can record the names. We really have to get on with this. It is ten to 2:00, and we have a long agenda ahead of us. I think we must move along, in fairness to other people submitting projects.

Any other names?

MR. PUGH: My name is George Pugh and I am representing the Pallisades Citizens Association. We fully endorse the position of our Georgetown colleagues.

CHAIRMAN BROWN: Anyone else?

MR. WHITNEY: My name is Henry Whitney. I am an architect and planner, retired. I am not in favor of the present scheme which is under discussion and analysis. I feel that something better can be done.

I think that Georgetown is only coming to be appreciated recently as a national treasure. I think this development is not appropriate under those circumstances.

MR. GARNER: I am Joel Garner, Chairman of the Wisconsin Avenue Corridor Committee, and I represent all of the civic associations west of Rock Creek Park in the District. I

am sorry General Woodson cannot be here.

You must realize this is one of the few times the rest of the city has had a chance to support something in Georgetown. That is a unique political situation, and we should take advantage of that.

MR. HODGES: I am with the Washington Post and I have one question. As I understand it, the National Planning Commission and other agencies endorsed an entire hiking trail along the entire waterfront, and I was wondering how that is addressed inhere, where it appears there are steps and not a continuous path.

MR. MOORE: There are no steps, but a continuous path all of the way along.

MS. ATHERMAN: My name is Amy Atherman. I am a limnologist. I do research in wetlands at the Marine Biological Laboratory in Wollaston, Massachusetts.

I am very pleased to see that your legal counsel has informed you that your consideration should be subject to the presidential order, that you consider primarily not to build on flood plains, and I think that should be fleshed out just a bit, because to say don't build on flood plains and then put up a four foot barrier for safety, well, that is not seeing clearly what happens. When you have a flood in an area that can absorb the water, that flood comes and goes, but when you have an area that is covered by more and more concrete, and

this is all going to be giving you a negative balance, you see--each cubic foot of water is going to go farther and come in with more punch, so that you are going to have problems in the District of Columbia, with adjacent homes that have not yet been touched by floods, and they are going to be impacted in terms of tens of thousands, hundreds of thousands and millions of dollars if this plan gets built, so you are going to have to consider who is going to bear the financial brunt of the floods that are going to come, because the floods aren't going to stop just because you have a statement saying I have a four foot gate.

Also, we have to keep facts straight. On the U.S. Geological Survey map there is no area within this filled area, and this is all filled land, there is no area that is higher than ten feet, so let's not extend it to 14 feet. Maybe there are rubble piles that do go that high, but they cannot be considered in terms of blocking water.

MR. MOORE: In the landscaping, we are sloping the land.

MS. ATHERMAN: Well, that is a proper consideration, a proper responsibility. However, you have to consider the force of the flood, not just on your little area. It will go in the surrounding area, and then everywhere downstream, and since this is a tidal area, it also goes everywhere upstream, and you have seen upstream currents really bashing in and

breaking down walls.

Look at the Canal walls. They were smashed by a hurricane and they have not yet been fixed for a couple of decades. This is the kind of power we are dealing with, and we don't see it right away, you know, when you are dealing with percentages and considering the hundred year flood. However, by the time we do see the problems, the original developer can legally be out of it. Their hands will be clean, and the people that are there are going to suffer.

CHAIRMAN BROWN: Thank you.

Any other statements?

MS. SULLIVAN: Mrs. George Getz would like to speak.

MRS. GETZ: I am Mrs. George Getz. When people would say "Where are you living", I would say, "Georgetown", and that used to mean something. I don't think so any more. I don't know where you get your architects; I have never seen such ugly architecture. I don't think they can do anything any more. As I say, I come from Georgetown and I just say the beauty is gone, the history is gone -- you are ruining everything.

CHAIRMAN BROWN: Any other statements?

VOICE: I would just like to say, for the benefit of some of the new members of the Board, in the last year we have seen several large projects opening in Georgetown, and

this year we have seen many more, and next year we will see many more. These are facts of life. But projects to date, they are really not being filled. Prospect Place is nowhere near full. The plaza of the Four Seasons Hotel has but one store. I am concerned that these new stores simply aren't going to be economically viable.

I know economics is not your concern, but I would just say Georgetown, because of its physical boundaries, it just doesn't have access and there is no parking available and these are things you have to have if they are going to be able to support these people.

Thank you.

CHAIRMAN BROWN: Any final statement on the part of those opposing this?

Any rebuttal of any of these things?

MR. MILLER: My name is Herbert Miller, President of Western Development Corporation.

I thought it might be appropriate, since this has turned into a rather in-depth discussion of citizens' viewpoints, et cetera, and a lot of you have not been here at the previous presentations where we have agonized over this project, to answer some of these concerns.

We have elicited some information as to the flood plain, which is an issue that has been discussed. This is a chart we have put together of those things that we are doing

of this property on this site.

With the parkland dedications by both the Distirct and the developer, we are, in fact, establishing a waterfront park. 82 percent of the waterfront area will be devoted to parkland and open space, with only 18 percent developed. I think,as an urban planner, that is a good balance between uses.

MR. BURSON: You say 18 percent for waht?

MR. MILLER: 18 percent of the whole waterfront. There are 14 acres of parkland, and we are working with the Park Service and with the District on these commitments which have already been made. With the tax situation in the District, this would produce 8.6 million in revenue for the District and many permanent jobs.

We are maintaining a low density. This density is approximately 50 percent of what we are legally, by law, allowed to build.

MR. NOVAK: What are you allowed?

MR. MILLER: You are allowed an FAR of approximately 1.4 or 1.5 on privately owned sites. When you talk about density, the balance of the waterfront, the density is about 2.65 of our overall FAR. The density is quite low.

The average height is about 4.3 stories, which has been reduced from a 90 foot maximum on this part and a 60 foot maximum on this portion, so we hav made that concession.

We are expending over a half million dollars for construction of parks, public parks, from 31st Street to Wisconsin Avenue.

Additionally, we are providing for planning and construction assistance for public park from Wisconsin Avenue to Key Bridge.

We have in our hands an appraisal by an MAI appraiser of the land we are dedicating for public use. According to this letter, the present fair market value of the land we are dedicating for public use is $24 million. The whole land, the six and a half acres, is presently appraised for $70 million, and the portion we are devoting to the public use is $24 million, which is a major concession that we are giving. It is 3.2 acres of open space.

We are establishing pedestrianways. Arthur talks about streets and I talk about pedestrianways. All of the cars are underneath, and our effort here is to make a people place, a place for living and working, with environment. The shopping is here, and the cars have gotten out of the area. All of the cars are underneath the ground.

We are re-establishing an historic port as a focal point, as a public place, which was its historic use many centuries ago.

We are expending 1.8 million of private funds for beautification of the Whitehurst and Potomac Freeways.

We are constructing a pedestrian bridge across Rock Creek, at our cost, and we are spending 1.75 million in initial cost for development of public areas, and when you talk about the Park Service, they don't even want to maintain the park area; they don't hake enough money, so we have agreed to maintain the park areas, in addition to spending the 1.75 million in construction.

I also thought it would be good to present to you a discussion of --

MR. NOVAK: In other words, your Home Owners' Association is not going to do that?

MR. MILLER: The developer does it.

MR. NOVAK: What happens to this land afterwards?

MR. MILLER: It is written int- the perpetual instrument at the dedication.

MR. NOVAK: That whoever owns the land has the obligation for maintenance?

MR. MILLER: Yes.

This Executive Order 11988 has come up several times. We have had a law firm give an opinion on this, and we are requesting an opinion from the Chairman of the Water Resources Council, who is in charge of 11988, and we have asked the White House for an opinion on 11988, whether you are, in fact, subject to it.

The opinion we have is that we are not, and we are

requesting a letter from the Chairman of that Committee.

Executive Order 11988 designates, further, the implementation of NFIA, which is the National Flood Insurance Act of 1968 and the Flood Disaster Act of 1973, none of which are administered or enforced or interpreted by your Commission. The activities of the Fine Arts Commission do not fall within the activities of the Executive Order, as set forth in Section 1 of the Executive Order. You do not acquire, manage, or dispose of Federal lands, provide federal financing, or assist in construction or improvements or conduct federal activities and programs affecting land use.

It is not applicable because the jurisdiction of the Fine Arts Commission is limited to the architecture of buildings; specifically, height, appearance, color, textures and materials of exterior construction, and does not include land use planning, regulation, or licensing.

The courts have not approved extensive interpretation of the jurisdiction of your Commission, particularly where it might be a taking of private property without due process of law. So the conclusion is that the Fine Arts Commission is not covered by 11988. . .nor, indeed, is there any publicly available evidence that you ever have deemed it within your powers to grant or withhold approval for proposed construction involving flood risks, land use or water use planning, or any other beyond those set forth in the

enabling statute, and, lastly, applying the requirements of 11988 to the Fine Arts Commission's current circumstances would open up a lot of unusual results: For example, are you covered under FDIC, which is, presumably, an insurance developer and lender. If you open one door, you might open a host of doors.

Basically, I think you need a clarification, if I might suggest, from the Water Resources Council.

Just as an additional comment, I would say if this property is subject to that, all of the other properties along Georgetown Waterfront, including Skidmore and the project here, plus all of the other property along the Potomac would be subject to flood control, and the southwest and the southwest waterfront, the Mayfair and the park site property, plus probably another 10 or 20 in the City that probably you will review, which I think is important to this case, and generally, I think, as a Commission I think a clarification should be made with the Water Resources Council.

As to flood plains, I am sure you have heard about the efforts of the District counsel relating to flood plains, what exists, to clarify this, and, as you have probably heard, there is a District promulgated order several years ago which allows for flood plain insurance up to $100,000. This project is $154 million. We have insurance riders for $153,900,000. One hundred thousand dollars is a federal requirement. The

Mayor reviews plans and makes sure they meet certain health and safety requirements, which we have abided by.

In addition, there are studies going on, which have taken a couple years, as to the more detailed flood plains, and we have, basically, checked the profile and flows as shown in this study, which is a rather detailed study. What we have done is prepare that study for ourselves for this parcel, based upon their theme and upon the requirements, and it is easy enough to get the information just on this site, but it takes several months to do it for the whole Potomac, which is rather senseless. It is only needed for this parcel.

The study, which is right here, has been submitted to the Department of Environmental Services for the District. I have never read it. It is very extensive, and they have, basically, signed off on this. They say we meet the criteria, so in terms of existing legislation we meet all of those criteria.

I just might say the last point is history of the site. I remember when it was in the planning stage and there was controversy about what was the Georgetown Waterfront. What you see here are some, I think, 33 studies prepared on the Georgetown Waterfront over the last 20 years, and still it is an industrial anachronism and a very poor introduction of Georgetown itself.

We spent three years working with a federal task

force, and talking about the massive density of the Georgetown Waterfront, that was down-zoned by the District in about 1975. The National Capital Planning Commission recommended 2.7 million feet, and the Citizens Association, in a letter to the Planning Commission in '75, recommended 2.4 million feet. The Citizens Association filed suit against the District in '78, and the zoning was upheld for 5.5 million. We tried to get an estimate of what is the area of the waterfront, and it is probably somewhere over 3 million and has never been built to the maximum.

Interestingly, the Citizens Association letter, which helped get Senator Mathias involved in the task force, recommended densities on this property which were about 50 percent of what it was zoned for and recommended a 50 foot walkway along the Potomac. That letter, which is available, basically was used by the task force and the National Capital Planning Commission as a vehicle to decide land use.

Actually the density we are dealing with is close to what the citizens wanted. Unfortunately, what has transpired is what finally came out of the task force and that was our guiding light, and although it is not legally effective now, it is very much what was asked for in '75.

Now, the citizens want, or a portion of the citizens want all part, but, in fact, what they have asked for they have been given, in many instances.

It was never, however, one hundred percent, but close enough to be basically in concert with their request.

In terms of this, I might say when Mr. Andrus left the Department of Interior, he reaffirmed the Department of Interior support of this in a letter.

CHAIRMAN BROWN: Would you submit that letter for the record?

MR. MILLER: This is the Secretary's letter. See following page

Now, this goes to the final point. This is not the only meeting, as some of the new members may have guessed, where the Citizens Association and other groups expressed support for an all-park concept. I know the Fine Arts Commission, and we, the developer, believe we can work toward compromise solutions. We have made millions of dollars of commitments, plus reduction in density, in height, to produce this. We originally worked on a different plan, and Arthur has been retained and we spent many, many months working on this.

Remember the Commission has gone through this. This is at the building permit stage. So in order to really know where the populous of the District stood, we retained an independent polling company called Hamilton & Staff that prepared a study, and I thought it might be of use to you. They asked, in November of last year, 507 residents of the District, statistically chosen, their opinion of this development, its

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

November 24, 1980

Mr. Sidney Howe
National Committee for Urban Recreation
1302 18th Street, NW., Suite 301
Washington, D.C. 20036

Dear Mr. Howe:

Prompted by your inquiries and the meeting which I held with you on September 12 I have reexamined the situation on the future of the Georgetown waterfront in the context of the agreement which I signed on behalf of this Department in July 1979. With regard to your request that we announce our unqualified commitment to the all park plan, let me say that we always favored an all park proposal. However, with the city's original position favoring some development and the lack of Federal funds to acquire the property, we were very comfortable with the provisions of the agreement which were developed by the interagency task force.

Since the agreement was signed, numerous circumstances have rendered the agreement incapable of being performed. However, the agreement served a valuable purpose in that it started a process which now will apparently result in approximately 14 acres of open space and 4 acres of private development. The District of Columbia has recently reaffirmed its intent, as outlined in the agreement, to transfer the property under its jurisdiction to the National Park Service. We look forward to working with the District of Columbia in implementing this transfer. Thus, in my recent review of this matter I have found that very little has occurred which would alter my support of the intent of the agreement.

I am aware, however, that there is legislation pending which would authorize acquisition of the private property for the all park solution. If legislation is passed which would provide the opportunity to exchange lands with the private owners on the waterfront, this Department stands ready to implement the exchange.

Thank you for your continuing interest in this highly significant matter.

Sincerely,

Rogers C. B. Morton

SECRETARY

effect on city problems, and et cetera, and this is a copy of such report. It is sort of interesting that 72 percent of the people in the City recognize that the development should be used for assistance in the economic problems of the City, and 64 percent of the people in Georgetown recommended in favor, as helping solve problems of the City.

In terms of City-wide, as a whole, seven out of ten people polled recognized our plan for the Georgetown Waterfront -- 70 percent of the people. Of that, two out of three supported this project. So we were very pleased. Fifty-seven percent of the people supported it, and 23 percent were against it, and then when they were given information as to the project, that number still went on a two in favor, one against. The same ratio continued all of the way through, and on every ward the majority of the people supported the project, including Ward 3, and including Wards 1 and 2. We were very pleased with those results, and I think it affirms that we were making a very important response to this.

One of the other things, in Georgetown though 42 percent of the people polled were against the project, while 33 percent were in favor of the project. It wasn't the unanimity that seems to be professed every time local groups come up to these meetings. It was basically showing that there is the desire to solve the problem of the Georgetown Waterfront, reducing this and establishing 82 percent parkland, and to make

this a reality instead of leaving an industrial anachronism for 20 additional years of study.

If you like, this is the survey that was prepared. I wasn't planning to go through this today, but since it became a political type meeting, I thought it would be helpful to know what the general populous thought about it, not just a small group.

MS. SULLIVAN: I wonder if it is appropriate for me to address this particular subject, Mr. Chairman, while it is fresh in my mind.

CHAIRMAN BROWN: I readlly don't think so. The Commission, of course, is happy to have as much evidence produced as possible, and I think the record will remain open and any additional points that anyone here would like to submit for the record will be studied, and so forth, but I just wonder -- this is up to the other members of the Commission, but I wonder at this point --

MS. SULLIVAN: There are just a number of things that we should clarify that Mr. Miller has just said.

CHAIRMAN BROWN: What is the consensus of the Commission?

All right, go ahead.

MS. SULLIVAN: Mr. Chairman, we heard about the survey going on just before the hearing of the City Council; and the moratorium, et cetera. We have received several calls

from people around the City who have been called in the survey, and their report to us was that the surveyor asked for the youngest male or female in the household and there was a great deal of name recognition, asking who is Kathryn Sullivan and what do you think of Don Shannon, and so on. We got a copy from Moore's office. I didn't find in that copy of the survey anything referring to what statement was made to the so-called uninformed citizens on the telephone, which should have been included.

I called Hamilton & Staff and I was referred to Abramson-Himelfarb, Inc. that was doing the survey for Western Development. I am not sure now who their clients were, but in any case I have a copy of what was asked in the telephone survey, if you would like me to enter it into the record or read it.

CHAIRMAN BROWN: I think if you could enter it into the record, it would be helpful.

MS. SULLIVAN: It is basically biased in favor of the developer. Five hundred people were called, and you can contrast that to what Mr. Stevens referred to, our thousands of names on petitions from all over the City and all wards, a rally on the River last October of 500 citizens around the City and several Council members and the Mayor, and, in fact, we had support of city-wide organizations, representing every ward and citizens association, so 500 is not a fair number for

a survey. Normally surveys are 1,500 or 2,000.

That is all I have to say on that.

As far as the value of this land, which has increased constantly, last year the tax assessed value was less than $8 million.

I, and a number of the rest of us were included in the task force meetings referred to by Mr. Miller, which began for us about June of '78. This was a few months after Senator Mathias introduced his bill. The Citizens Association was not involved in that. We were unhappy about it. It led to only discussion of development by Mr. Miller from the very beginning, and, of course, subsequently he saw the errors of that and he introduced his own bill. But we never approved any development on that land. You see here all of the people that opposed it.

I guess I will let Mrs. Bonderman speak on this.

MS. BONDERMAN: I just have a couple letters to introduce into the record.

There was some discussion about the coverage of The Fine Arts Commission by the Executive Order, and the Water Resources Council, which is the agency administering the Executive Order, had, back in March, 1980, written to the National Capital Planning Commission concerning the different proposals that were under discussion at the time, and this development was clearly a flood plain involvement covered under

the Executive Order, and the Water Resources Council thought the park solution was the best solution under the Executive Order. That was 2 NCPC.

They later wrote to the Fine Arts Commission and they also sent us a copy of the letter, saying they thought the Fine Arts Commission should take this Executive Order into account in deliberations on the matter.

Obviously we can prepare legal documents as well as the developer, but since you have your own legal counsel, unless we are requested to do so, we won't.

MS. SULLIVAN: I wonder if Mr. Miller would introduce in the record the letter he was reading from, the legal opinion.

MR. MILLER: I will be happy to make a copy for you.

CHAIRMAN: Also, can we introduce the commitments text, as well?

MR. MILLER: Yes.

(The documents referred to are as follows:)

* * * * COMMISSION INSERT * * * *

See following page

Western Development Corporation
1204 Wisconsin Avenue, N.W. Washington, D.C. 20007 (202) 965-3000 Tlx

RECEIVED
FINE ARTS
D. C.

March 25 1981

MAR 25 1981
NOTED

Mr. J. Carter Brown, Chairman
Fine Arts Commission
708 Jackson Place
Washington, D. C.

Dear Mr. Brown:

The attached is a summary of the various arguments against applying Executive Order 11988 (Floodplain Management) to the architectural review function of the Fine Arts Commission ("FAC") which I stated at the Fine Arts Commission meeting on March 10, 1981.

Very truly yours,

Herbert S. Miller
President

HSM:ph

Enclosure

The Fine Arts Commission clearly is not covered by EO 11988 because, among other reasons:

(1) EO 11988 expressly is designed to further the implementation of NEPA, the National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973, none of which are administered, enforced, or interpreted by, or have anything to do with, the FAC.

(2) The activities of the FAC do not fall within the activities covered by the EO, as set forth in section 1 of the EO. The FAC does not (a) acquire, manage, or dispose of federal lands; (b) provide Federally undertaken, financed, or assisted construction or improvements; or (c) conduct "Federal activities and programs affecting land use."

(c) is not applicable because the jurisdiction of the FAC is limited to approving the architecture of buildings, specifically their "height and appearance, color, and textures of the materials of exterior construction" (40 USCA §121), and does not include land use planning, regulating, or licensing.

(3) Courts have not approved expansive interpretations of the jurisdiction of the FAC, particularly where the result might be a taking of private property without due process of law. See Commissioner of the District of Columbia v. Beneman, 329 A. 2d 437 (D.C. App. 1974)

(4) The conclusion that the FAC is not covered by EO 11988 is further supported by the fact that the FAC has never promulgated, nor been asked by the U.S. Water Resources Council (which administers EO 11988) or any other federal agency to promulgate, any regulations pursuant to section 2(d) of the EO, as would have been required had the FAC fallen within its scope. Nor did the FAC submit a report to the Council on Environmental Quality and the Water Resources Council by June 30,1978, a requirement for agencies covered by the Order. Nor, indeed, is there any publicly available evidence that the FAC ever has deemed it within its powers to grant or withhold its approval for proposed construction on environmental, flood risk, land use or water use planning grounds or any other criteria beyond those set forth in its enabling statute. (Again, see the narrow construction of the FAC's powers by the D. C. Court of Appeals in the Beneman case.)

(5) Applying the requirements of EO 11988 to the FAC in the current circumstances (private building on private land; agency's responsibility is for architectural revenue, not land use) would open up a host of absurd results. If the EO applies to the FAC, for example, why not to the FDIC, since the FDIC presumably insures the developer's lender?

(6) The points above show that imposing the requirements of EO 11988 -- along with the attendant costs, delay and disruption -- through the tenuous federal connection of withholding FAC approval would be grossly unfair. It also would be contrary to the Administration's policy of reducing overly intrusive and burdensome federal regulation.

CHAIRMAN BROWN: I think at long last it would be nice for the Commission to have an opportunity to discuss this among themselves.

MR. NOVAK: This has been before the Commission, of course, and what is the Commission's feelings on this third go-around?

CHAIRMAN BROWN: The Commission has been on record as favoring an all-park solution and all design reviews of this and preceding projects have been prefaced by a reiteration of that.

Now that it has come before this Commission, which is composed of five new members, I suppose the first issue would be whether the successor Commission would agree with its predecessor Commission in its general rubric.

I might say for the record, since there was some confusion on the point coming from the seeming ambiguities which could be adduced from interpretation of Mayor Barry's letter, at the hearing with Senator Hatfield last year, at which I was present, the Mayor was represented there by Mr. Gibson of the Planning Office and on the public record there he was quite unequivocal in quoting the Mayor that the position of the District Government was that if funding could be found, an all-park solution, in their opinion, was preferable to any other. I think that the record would bear this out. I just thought I would clarify that. But in terms of our own deliber-

ations, I imagine that this would be the first step: The issue that bears on it, which is whether or not the Executive Order 11988 applies to our deliberations is one in which there are certain legal issues which would be rather impossible for us at this moment to determine. We have a ruling from the United States Government official attorney, in the sense of the Justice Department, saying that in this case we should take it into consideration, and I don't know if we can take it as a precedent that we should or should have not taken it into consideration in every other project in the District that would have such an aspect, but it is on paper from the Justice Department, which I would call a close question, if that is what it was, and I suppose that it would have to be tested in a court of law, so perhaps our decision should take it into consideration, along with other factors, in a general way, but not in a narrow legal way, on the premise that we presumably could be overturned by due process.

That I just state as a layman.

MR. BURSON: Until it is tested in Court, any interpretation you can get is as a volunteer. Anybody can be a volunteer, but possibly the Justice Department is the best volunteer you can have.

CHAIRMAN BROWN: Since it is a Federal issue and we are a Federal entity --

MR. BURSON: I would say it is fairly clear if we

make a decision based on this which would affect the applicant that we might get an opinion. Absent that, we wouldn't because there wouldn't be any need.

CHAIRMAN BROWN: That is right, since the final decision -- I don't think as a layman I can say we would be subject to any kind of admonition about unfair taking or anything. We are here fulfilling our statutory mandate to render advice when asked. We have been asked by the District, presumably, for our advice on this. So up until now we have been talking in terms of if the District decided to build, how they might best build.

It seems to me when one comes to a point in which actually a permit to build based on working drawings is before them, then the issue becomes very pointed, as to whether it is the advice of this Commission to the District that a permit be granted for this specific project or not.

Now, in the past we have made such advice contingent on various assurances, and I, for one, am not entirely convinced as to the completeness of those assurances. First of all, the design that the Commission up to this point has looked at has been one which has this historic preservation aspect conceptually to the idea of Georgetown as a port being carried through, and it really works, basically, as a port, no matter how small it might be symbolically, but at least it carries that link to the past.

It seems to me that issue has not yet been resolved. They need to have permits granted by federal agencies on the basis of the mechanics of the thing.

Secondly, there is a question what guarantee do we have, if this project goes forward, that it will simply not provide precedent in the eyes of the District to allow similar projects to accumulate, adjoining all of the way to Key Bridge, and this has been a very important element in our decision, since if one can accept 82 percent park -- we are not ruling on that as a distinct percentage -- I think that makes such a position highly vulnerable, because I don't see yet any assurance that in spite of the best intentions of the people, including those in the previous Administration, I see nothing that can really be taken as binding evidence that the entire vision of green will ever become a reality. I think that is a key issue,

MR. STONE: You have, of course, the Corps of Engineers' decision, and they are really more competent to address the flood plain matter, and you get their authority and the National Park Service assurance that the park scheme will be accepted and maintained, as in Mr. Miller's outline, and the guarantee of the 82 percent parkland, which is all part of the package, which is what it boils down to.

MS. MYERS: We have the authority that we could just reaffirm, if we want to?

CHAIRMAN BROWN: Yes. We can't make it happen.

MR. BURSON: Earlier you said that you thought the first step is for this Commission to reaffirm the position that the Commission has taken in the past on a complete parkland solution. It seems to me, you know, whether or not that happens,you then get courses of action that can flow from this because it seems to me if you say a total parkland solution, this is a compromise in philosophy, you know, and youhave to decide whether or not you want to do it.

MR. NOVAK: That is why we need to know if this Commission approves the all parkland.

MR. NETSCH: And this becomes embarrassing because none of us really participated in the decision on the approval of the building to date.

MR. NOVAK: As the Chairman indicates, the willingness of the body or at least the institution to endorse a compromise is inevitably associated with the closeness that that compromise approaches the all-park solution, given the reality that confronts us in the place we live, and he points out correctly that we do not have a real knowledge, given the sense that we come to these things within the light of reality, that the 82 percent solution will be true, and the Commission is firmly opposed to, on sound grounds within their institutional mandate, building throughout this area, then it seems to me that they should condition any advice to the District that they

could not recommend in favor of the building permit unless the District, in fact, took the action necessary to assure that this development plan could occur, because if this development plan is the best we can hope for, even though we prefer all park, we are, in effect, the last bastion of hope that it will be realized, because the District is in between us and that outcome.

MR. NETSCH: I think we have to go beyond that. I mean I accept all that, but --

MR. NOVAK: I didn't say we didn't; I just said it seems to me we have to do at least that.

MR. NETSCH: I didn't mean to interrupt. I know now where you are going with that.

I have another problem. I admire Arthur Cotton Moore very much and I have enjoyed many of his buildings. I was not here on earlier discussions of this building, and I am at a loss to understand how this building does fulfill our charge relative to Georgetown in terms of the character of the building and the place. I find it much more reminiscent of Maybeck in the 1915 Expo in San Francisco which, for all its charm, is quite different than what had been interpreted as our charge.

Now, even accepting that, that the architect has the right, because he has the talent, to propose an extension of the original, then you have to begin to analyze what are the

contents of that extension, and I find it peculiar that this Committee allowed this sort of Sybaritic symbol to appear out on this plaza, containing bathrooms and bedrooms and studies in a form reminiscent of current Washington publicity as a kind of feature of the Georgetown environment, and I know that everyone has looked toward the information that has been given, but I find this very elitist interpretation of land use in the guise of commercial and social development really contrary to the edge of the river.

You see, I come from Chicago,where we have a phrase "forever open, free and clear", where we fight to the death for our waterfront, and I know that the issue of private parties have to be recognized in our society, and so I find myself not in agreement with the plan on an architectural basis.

I do think that the site plan is brilliant and if the site plan and the port concept could be carried out, I think there should be really -- it is one thing to build Watergate with some umpty-ump apartments facing the river, an opportunity for people to see the river, but for this small portion, for people to participate in this kind of a Roman holiday, I think is inappropriate to the waterfront.

I just had to say my piece.

(Applause)

MR. MOORE: One other thing -- it is very late in the game -- I wish that we would have had an opportunity to

walk you through.

I think that we have worked through this Commission, and a lot of these things had historic references in Georgetown, and we went through that with the previous Commission and with the Georgetown Board three times now -- actually six times in all -- and they agreed with that. They consistently agreed with that. I would say at this stage that we have premised everything upon that, and we have done a tremendous amount of work, and I wish we at least have an opportunity to go through that with Mr. Netsch, and we have at least six previous views --

MR. NETSCH: I accepted that, as I said, in my opening statement.

MR. NOVAK: Mr. Moore, I believe he was saying that he had an institutional posture which happened to be different from his personal opinion because, in fairness to you, I think it is very difficult for a member of this Commission, in its institutional position, particularly if he is a new member, to come in and ignore the cooperation, the collaboration, that may have taken place that causes the project to go over a period of years and cost a vast expenditure of money and then say it is not what I would have done and is not what I would like.

MR. MOORE: I understand, but we did work through the process and we did present it some six times, and everybody

liked it at that point.

MR. NETSCH: I have to accept that.

MR. NOVAK: Which is what I get back to, Mr. Chairman, and that is why I asked at first what is the Commission's position, because I think if the Commission is to operate in sort of a disciplined manner, in accordance with its mandate, it has certain institutional responsibilities to the past, and this is apparently the third time it has been here, and it goes through a process. I don't feel I have to go through a process of well, this is the first time I am here and I live in Georgetown and I want all park, and that is why I want you to phrase to me what the position was.

CHAIRMAN BROWN: I think we have done that.

I think we have now come to a point where we have to render advice to the Mayor as to whether this project, as presented, should or should not proceed with our recommendation that it happen, and I think in view of the number of open questions which have been listed here and the degree to which, at least institutionally, we have been committed to all park that it is time to make that determination as a Commission, and we probably should do that --

MR. CHASE: Mr. Chairman, could I just state this: I think in order for us to really justify our position as members of this Commission, we need to keep the interest of not only the citizens of Washington, but those of the entire

country, in mind and if we do that, I can't see us doing anything other than denying approval of this project. I so move.

CHAIRMAN BROWN: Do we have a second?

MR. BURSON: I second it.

CHAIRMAN BROWN: All in favor of the motion to deny a permit at this point in time?

(Chorus of ayes)

CHAIRMAN BROWN: Any opposed?

(Commissioners Meyers and Novak indicate opposition)

CHAIRMAN BROWN: So it is carried on a five to two vote.

MR. MOORE: Well, I guess now we will end up where we expected we would -- in court.

CHAIRMAN BROWN: Shall we call the meeting together? Could we proceed with the next item?

MR. RYAN: The next case, O.G. 81-47, the site of 3300 M Street, Northwest, a new commercial office and residential development. The Commission members have had a chance to visit the site this morning.

This particular project is not here for a permit application; this project has not been approved by the Old Georgetown Board yet. It has come before the Old Georgetown Board a number of times now, and Mr. Wright will comment on it as soon as I show a few of the previous designs. We would like to have some sort of a reaction from the Commission so

DEVELOPER COMMITMENTS TO THE WATERFRONT

Exhibit C-4

- Parkland dedications by both Developer and the District of Columbia to establish 82% parkland and open space from Rock Creek to Key Bridge.
- Maintaining low-scale integrated development, thusly preserving needed tax base and employment for the District of Columbia.
- Reduction in permitted zoning density by approximately 50%.
- Reduced average height from 90' maximum to average of 4.3 stories.
- Expenditure of one-half million dollars for construction of public park from 31st Street to Wisconsin Avenue.
- Planning and construction assistance for public park from Wisconsin Avenue to Key Bridge.
- $24 million appraised value of one-half (3.2 acres) of privately-owned or controlled land dedicated for parkland and other public uses.
- Establishing pedestrianways extending from 30th Street, Thomas Jefferson Street, 31st Street and Virginia Avenue at a cost of over one-half million dollars.
- Re-establishment of historic port as a focal point for public activities.
- Expenditure of $1.28 million for aesthetic improvements to Potomac and Whitehurst Freeways.
- Construction by Developer of pedestrian bridge over Rock Creek.
- Construction and perpetual maintenance by Developer of public areas. Initial development cost of $1.75 million.

Exhibit C-5

THE DISTRICT OF COLUMBIA

MARION S. BARRY, JR.
Mayor

WASHINGTON D.C. 20001

March 10,1981

Mr. Donald Shannon
Chairperson
Georgetown Citizens Association
1068 - 30th Street, N. W.
Washington, D. C. 20007

Dear Don:

In response to your recent request, I am pleased to reiterate my support for a park on the Georgetown Waterfront. In that regard, I have supported the transfer of District owned property to the National Park Service for use as a park.

Best wishes.

Sincerely,

Marion S. Barry, Jr.
Mayor

THE COMMISSION OF FINE ARTS

ESTABLISHED BY CONGRESS MAY 17, 1910

J. CARTER BROWN, Chairman

HAROLD BURSON
JOHN S. CHASE
SONDRA G. MYERS
WALTER A. NETSCH
ALAN R. NOVAK
EDWARD D. STONE, JR

CHARLES H. ATHERTON, Secretary

Exhibit C-6

708 JACKSON PLACE, N.W.
WASHINGTON, D.C. 20006
202-566-1066

March 23, 1981

Dear Mr. Moore:

At its meeting on March 10, 1981, the Georgetown Harbour Associates again brought in plans for a large-scale, mixed-use project at 3020 K Street, N.W. on the Georgetown waterfront. For purposes of identification the application was numbered O.G. 81-72 and dated February 26, 1981. The applicant stated that the final design and construction documents were virtually complete, that they expected to receive zoning approval within a very short time, and expressed their interest in the Commission taking formal action as to their position on the recommendation of a building permit. The Commission recognized that the application had been filed as a final preliminary review, and that zoning review by the District of Columbia Government would have to be completed prior to the developer's filing for the actual issuance of a construction permit.

After a review of the Commission's previous actions on this proposal, and after hearing extensive testimony by both the developer and opposing community groups, the Commission voted to recommend at this point against the issuance of a building permit.

Many reasons for the Commission's position, which has not changed since this corporation's proposals have come before it, are already well known to you through our previous reports. While we have responded to requests to comment on design proposals as they have evolved in the event that the District Government should decide to proceed with construction, we have consistently emphasized our belief that this land should be developed as recreational space compatible with the open park setting of other lands adjoining the Potomac River. In our view, commercial development should be held to a minimum and, ideally, would be limited to those uses that would reinforce this space's basic recreational character, such as a restaurant, boat house, or other such functions.

We have also requested that there be concrete and binding evidence that D.C. lands adjoining the site on the west would be transferred to the National Park Service. As we stated in our April 22, 1980 letter to the

...2/

District and which we recited again in our October 20, 1980 letter:

> "Before the Commission gives its final approval, however, we would like to have a firm commitment from the Federal and District agencies on developing all remaining lands south of K Street as part of the National Capital Parks system. There have been references to such an agreement at various times in the past, but none of them has been binding, including the task force agreement that was put forward last summer. Since there does not appear to be any obstacle to the transfer of the land west of Thirty-first Street to the National Capital Park system, we recommend that the District Government undertake at the earliest possible time the necessary steps to accomplish this end."

In response, in the District's letter to the Commission of February 27, 1981, Mr. Gibson expressed his personal commitment to achieve creation of the proposed public park at the earliest opportunity. But no concrete action affecting the transfer has yet occurred; the National Park Service has not pledged to receive and maintain the land as park, and the developer has not provided to us a written commitment of a perpetual easement for a public right of way along the water.

Until these steps are actually taken, or at least firmly committed for action, upon or immediately subsequent to the grant of any permit for construction, the Commission could have no assurance that the developer's plan, which includes the development of parkland, as well as commercial development, would ever be realized.

I should also mention that one of the fundamental elements of the design that the Commission hoped might mitigate the effects of development was the inclusion of a boat basin for small craft. It could have served as at least a symbolic link with the past when the waterfront was an active port. Such a feature was consistent with our recommendations to provide recreational uses; yet the current plans presented to the Commission failed to include the basin. Instead there was a decorative pool with no connection to the river. The developer stated that it was still their intention to construct the facility at some time in the future, but again no evidence was offered to support the developer's claim.

Finally, the Commission has been advised by the Justice Department that Executive Order 11988, regarding federal agency actions involved with development of floodplains, does in fact apply to the Commission of Fine Arts. The order essentially requires that all federal agencies "avoid direct or indirect support of floodplain development for the purpose of reducing the risk of flood loss, to minimize the impact of floods on human safety, health and

welfare, and to restore and preserve the natural and beneficial values served by floodplains." It should be noted that this opinion was received after our report to you on this project's previous submission on October 21, 1980. I am enclosing a copy for your information.

Sincerely yours,

J. Carter Brown
Chairman

Mr. Robert L. Moore, Director
Department of Housing and
Community Development
District of Columbia Government
1133 North Capitol Street, N.E.
Washington, D.C. 20002

Enclosure

THE COMMISSION OF FINE ARTS

ESTABLISHED BY CONGRESS MAY 17, 1910

J. CARTER BROWN, Chairman

HAROLD BURSON
JOHN S. CHASE
SONDRA G. MYERS
WALTER A. NETSCH
ALAN R. NOVAK
EDWARD D. STONE, JR.

CHARLES H. ATHERTON, Secretary

Exhibit D

708 JACKSON PLACE, N.W.
WASHINGTON, D.C. 20006
202-566-1066

March 20, 1981

Dear Mr. Lockwood:

The Commission was happy to meet with you and your consultants on March 10, 1981 and to approve revised designs for the overhead signs proposed for Theodore Roosevelt Bridge. Because we recognize the necessity of the proposal to traffic safety, and since the signs are located behind the tree lines and back from the Potomac River vistas, the Commission feels an exception can be made to the policy of avoiding such installations as a part of the Potomac Bridge system. The variety of studies which you undertook to insure the minimal intrusion have been much in the public interest. The resulting approved design of a single beam with smaller more compactly designed signs crossing the roadways between supporting columns may be best treated in a neutral grey to pick up the sky and the colors of the bridge itself. We appreciate your efforts and the cooperative spirit you showed in working with the Commission.

Sincerely yours,

J. Carter Brown
Chairman

Mr. Richard C. Lockwood
Transportation Planning Engineer
Virginia Department of Highways
and Transportation
1221 East Broad Street
Richmond, Virginia 23219

April 16, 1981

Exhibit E

Dear Phil:

Just a note to confirm the Commission's March 10 approval of temporary access for handicapped at the north entrance of the Castle.

It is good to know there will be little if any alterations required for the installation of the lift and awning, and that the whole affair can be removed when better access is provided with construction of the South Quadrangle.

With best regards.

Sincerely yours,

Charles H. Atherton
Secretary

Mr. Philip Reiss
Director
Office of Design and Construction
Smithsonian Institution
955 L'Enfant Plaza Room 3230
Washington, D.C. 20560

EXHIBIT E

THE COMMISSION OF FINE ARTS

ESTABLISHED BY CONGRESS MAY 17, 1910

J. CARTER BROWN, Chairman

HAROLD BURSON
JOHN S. CHASE
SONDRA G. MYERS
WALTER A. NETSCH
ALAN R. NOVAK
EDWARD D. STONE, JR.

CHARLES H. ATHERTON, Secretary

Exhibit F

708 JACKSON PLACE, N.W.
WASHINGTON, D.C. 20006
202-566-1066

March 20, 1981

Dear Col. Badger:

The Commission was happy to meet with you and Mr. Robert White, the sculptor for the Pershing statue, proposed for Pershing Park at 14th and Pennsylvania Avenue, N.W. during our March 10, 1981 meeting. In approving the three foot high plaster model, the members were delighted with the character and pose represented, but recommend that special attention be given to the accuracy of detail in the uniform and the binoculars. We understand that Mr. Joe Ronsisvalle, of the National Capital Parks, has access to some excellent photographs of General Pershing and suggest that you contact him in that regard.

Now that the park has taken shape and the walls are in place surrounding the proposed statue site, there may be merit to a full-size mock-up to judge how the sculpture will relate to the height of the walls and whether or not the head alone would be visible from any major vantage points behind the walls. If that were the case, it might be necessary to augment the existing landscaping with a high evergreen hedge or other screen planting in order to prevent the head from appearing disembodied. There may also be merit in considering a temporary base which could adjust the height of the actual piece when it arrives at the site. We will be happy to follow through with these details as you progress.

Sincerely yours,

J. Carter Brown
Chairman

Col. Frederick Badger
American Battle Monuments
Commission
Pulaski Building
20 Massachusetts Avenue, N.W.
Washington, D.C. 20314
Room 5127

Exhibit F

THE COMMISSION OF FINE ARTS

ESTABLISHED BY CONGRESS MAY 17, 1910

J. CARTER BROWN, Chairman

HAROLD BURSON
JOHN S. CHASE
SONDRA G. MYERS
WALTER A. NETSCH
ALAN R. NOVAK
EDWARD D. STONE, JR.

CHARLES H. ATHERTON, Secretary

Exhibit G

708 JACKSON PLACE, N.W.
WASHINGTON, D.C. 20006
202-566-1066

March 20, 1981

Dear Mr. Barnes:

The Commission of Fine Arts met with members of your staff and PADC consultants during the evening of March 9, 1981 for a lighting demonstration near 4th and Pennsylvania Avenue, N.W., and again during the Commission's public meeting on March 10, 1981. The Commission's recommendation is that the freestanding sculptural light pole be eliminated from the Avenue furnishings. After inspection and discussion, the Members recommend that if any tree or pedestrian lighting is to be used, it be attached directly to the trees in the simplest manner.

The Commission was also disappointed in the light quality of the newly installed ornamental fixtures. The mercury vapor light is too blue and cold. Though we were informed that the proper luminaires had not yet been installed, we are concerned and would like to follow through on that detail.

While the Commission gives tentative approval to the tree hung fixture inspected on March 9, 1981, we would like to review the actual drawings for final design in a public meeting. We would also be glad to look at any additional mock-ups, particularly of color corrected luminaires for the ornamental fixtures.

We appreciate the effort that the Corporation has made in planning the Avenue lighting and look forward to its completion.

Sincerely yours,

J. Carter Brown
Chairman

Mr. W. Anderson Barnes
Executive Director
Pennsylvania Avenue Development
Corporation
425 13th Street, N.W.
Washington, D.C. 20004

THE · COMMISSION · OF · FINE · ARTS

ESTABLISHED BY CONGRESS MAY 17, 1910

J. CARTER BROWN, Chairman

HAROLD BURSON
JOHN S. CHASE
SONDRA G. MYERS
WALTER A. NETSCH
ALAN R. NOVAK
EDWARD D. STONE, JR.

CHARLES H. ATHERTON, Secretary

708 JACKSON PLACE, N.W.
WASHINGTON, D.C. 20006
202-566-1066

Exhibit H

March 20, 1981

Dear Mr. Barnes:

The Westminster Investments Corporation followed the recommendations of the PADC Board and presented their preliminary plans for Squares 459 and 460 to the Commission of Fine Arts on March 10, 1981.

We were delighted to see the plans at this early stage. It looks like an excellent concept, and we anticipate no problems if the designs are developed along the lines they described. The retention of the old Atlantic Coast Line Building and the architectural references to the Metropolitan Hotel which once occupied the same site are both effective measures in emphasizing the historic recall of this special part of Pennsylvania Avenue. The applicant asked our opinion about the concept of incorporating some of the relocated facades of buildings currently stored by PADC. This would have to be done with skill and in the right place if it is to be convincing, but in general the members applauded the idea of using these pieces to create a continuous critical mass.

We look forward to following the design development of this project.

Sincerely yours,

J. Carter Brown
Chairman

Mr. W. Anderson Barnes
Executive Director
Pennsylvania Avenue Development
Corporation
425 13th Street, N.W.
Washington, D.C. 20004

Exhibit H

SMITHSONIAN INSTITUTION
FREER GALLERY OF ART
Cable: FREER, Washington, D. C. WASHINGTON, D. C., 20560 Telephone: (202) 357-2104

March 10, 1981

Exhibit I

Mr. Charles H. Atherton
Secretary
The Commission of Fine Arts
708 Jackson Place, N.W.
Washington, D. C. 20006

Dear Charles:

There are so many new faces on the Commission that I was pleased to see you when the group came to the Freer on Tuesday, March 10. The curators and I are beholden to you for your patience in listening to our explanations of the individual pieces. Since we know that you have a special interest in Oriental art, it makes our job much easier.

Enclosed is a copy of the statement with Carter's signature.

With best regards.

Yours sincerely,

Thomas Lawton
Director

TL/mh
Enclosure

MAR 13 1981

The Regents of the Smithsonian Institution and the Commission of Fine Arts, as provided in Paragraph 4 of the Codicil to the Will of the late Charles L. Freer, have examined the following objects:

Gifts to the Collection:

1 Japanese lacquer wood box; Edo period (1615-1868); rims bound in silver, decoration in gold and silver maki-e and inlaid coral.

1 Chinese metalwork; T'ang dynasty (618-906); silver stem cup.

1 Chinese vase: Huang-tao type; T'ang dynasty (618-906); flambe decoration.

1 Chinese pottery; T'ang dynasty (618-906); jug with applique figures and gold lacquer: handle and spout.

1 Chinese pottery; Sung dynasty; 10th century; vase; iron-spot decoration; ceramic.

1 Korean pottery; Koryo; 12th century; celadon bowl.

1 Set of 4 wooden tablets; Han dynasty; from Chü-yen (Kansu Province, First century B.C.) (1 dated 42 B.C.) black pigment on wood.

Purchases for the Collection:

1 Chinese Calligraphy; Ch'ing dynasty; by Cha Shih-piao (1615-1698); Running script on satin with floral pattern; ink on paper; hanging scroll.

1 Chinese painting: Ming dynasty (1368-1644); by Wen Po-jen; landscape; slight color on paper.

1 Chinese painting; Ch'ing dynasty (1644-1912); by Kao Ts'en; landscape; slight color on paper.

Purchases for the Collection (continued)

1 Chinese painting; Ch'ing dynasty (1644-1912); by Li Shih-cho; landscape; slight color on paper.

1 Japanese painting; Muromachi, 13-14th century; Buddhist Lohans; colors on silk; panel.

1 Japanese painting; Muromachi, 13-14th century; Buddhist Lohans; colors on silk; panel.

For the Regents of the Smithsonian Institution

10 March 1981

s/ J. Carter Brown
For the Commission of Fine Arts